

**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

RECEIVED
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SC Court of Appeals

Wolfe Marie Vernon Trust,

Appellant,

v.

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

RECORD ON APPEAL

THURMOND KIRCHNER & TIMBES, P.A.
Thomas J. Rode
15 Middle Atlantic Wharf
Charleston, SC 29401
Phone: 843-937-8000
Attorneys for the Appellant

CLEMENT RIVERS, LLP
Stephen L. Brown, Esq.
Brian L. Quisenberry, Esq.
Russell G. Hines, Esq.
PO Box 993
Charleston, SC 29402
Phone: 843-579-1331
Attorneys for Respondents

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¹ Respondents’ Memo in Opposition to Appeal to Circuit Court is not part of the Record on Appeal.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1000785

Wolfe Marie Vernon Trust Is The
PLAINTIFF(S)

Board Of Zoning Appeals Is Mount Pleasant The et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Appellant's appeal from the Mount Pleasant Zoning Board is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/10/2022 .

Mount Pleasant Town Of The for Mount Pleasant Town Of The
Board Of Zoning Appeals Is Mount Pleasant The for Board Of Zoning Appeals Is Mount Pleasant The
Mount Pleasant Town Of The for Mount Pleasant Town Of The
Board Of Zoning Appeals Is Mount Pleasant The for Board Of Zoning Appeals Is Mount Pleasant The

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Wolfe Marie Vernon Trust Is The VS Board Of Zoning Appeals Is Mount Pleasant The , defendant, et al

Case Number: 2021CP1000785

Type: Order/Electronic Form 4

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2022-01-10 15:40:20 page 3 of 3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	Civil Action No.:2021-CP-10-0785
<i>In Re: 520 Whilden St.</i>	)	
<i>in which,</i>	)	
	)	
The Wolf Marie Vernon Trust is,	)	
	)	
Petitioner,	)	
	)	
vs.	)	ORDER
	)	
	)	
The Town of Mount Pleasant, and the	)	
Mount Pleasant Board of Zoning Appeals is,	)	
	)	
Respondent.	)	

This matter is before the Court pursuant to Rule 59 (e) SCRPC. The Plaintiff seeks an Order of this Court amending or altering its Order of January 10, 2022.

Pursuant to Rule 59 (f) SCRPC, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of the Petitioner, this Court has determined that its original Order dated January 10, 2022 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.

AND IT IS SO ORDERED.

Manning, South Carolina

Dated: _____

R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit



Charleston Common Pleas

Case Caption: Wolfe Marie Vernon Trust Is The VS Board Of Zoning Appeals Is
Mount Pleasant The , defendant, et al

Case Number: 2021CP1000785

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2022-03-21 09:22:43 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

In Re: 520 Whilden St.
in which,

The Wolfe Marie Vernon Trust is,

The Appellant.

and

The Town of Mount Pleasant, and the Mount Pleasant Board of Zoning Appeals is,

The Respondent.

NOTICE OF APPEAL
(S.C. Code Ann. § 6-29-820(A))

**From the Mt. Pleasant Board of
Zoning Appeals Case No. A-2-2021**

TAKE NOTICE, that Appellant, as the owner of 520 Whilden Street¹ (the “Lot”), pursuant to S.C. Code Ann. § 6-29-710, *et seq.*, herein appeals the Final Order (the “Order”) issued by the Town of Mount Pleasant’s Board of Zoning Appeals (“BZA”), on January 25, 2021. This Order being attached hereto as **Exhibit A**. For the reasons stated, together with the arguments and exhibits as may be additionally presented at a hearing, this Honorable Court should reverse.

JURISDICTION

This Court has appellate jurisdiction pursuant to S.C. Code Ann. § 6-29-820(A); and this appeal is timely pursuant to S.C. Code Ann. § 6-29-820(B) (i.e., within thirty (30) days).

INTRODUCTION

This matter concerns the interpretation of Section 156.007 of the Town's Zoning Ordinances which defines the "front" and "back" of a lot for setback purposes. The BZA determined the Lot's longer East boundary was the "back," and thus subject to a 25' backyard

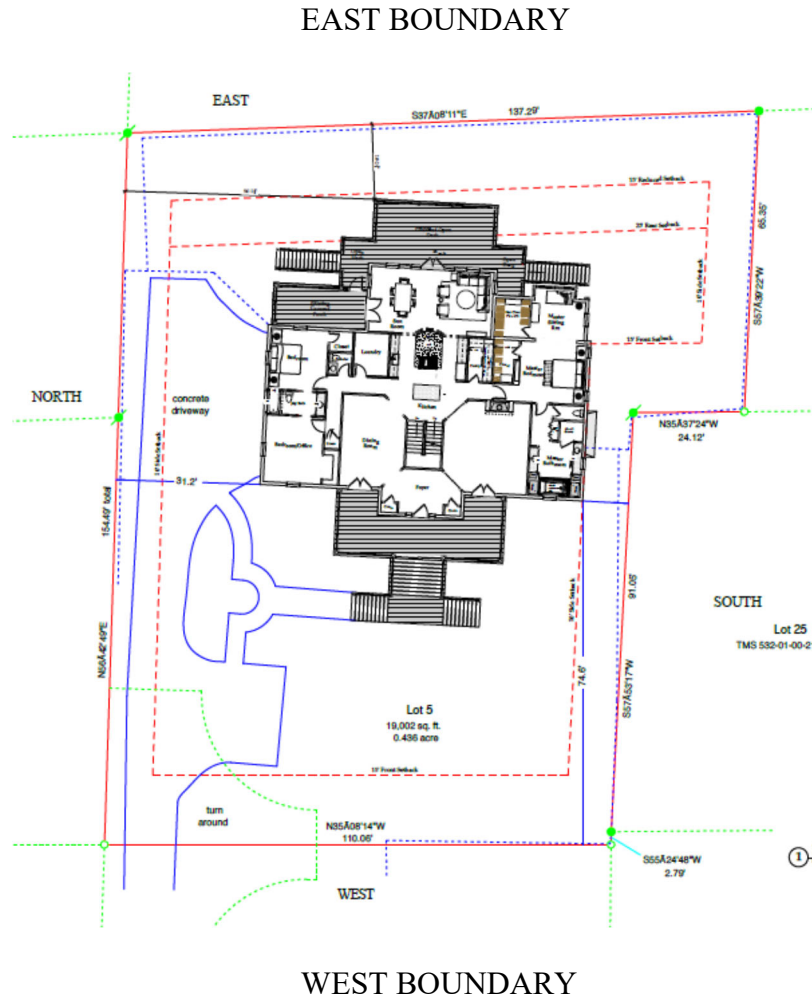
¹ More specifically known by TMS No. 532-01-00-271; and described in the deed recorded with the Charleston County Register of Deeds at Book 0776, Page 902.

setback, rather than the smaller 15' front yard setback. The BZA's decision was premised upon the orientation of the Lot and the house, and had the effect of reducing the buildable area of the Lot to a greater extent than had the East boundary been determined to be the "front." Because Section 156.007 explicitly requires this determination be made "**regardless of lot and building orientation so as to provide the greatest amount of buildable area**", the BZA's ruling is contrary to the plain language of the statute. This constitutes an error of law and requires reversal.

FACTUAL BACKGROUND

Appellant acquired the Lot in February of 2019, and at the time there was already a house (the "House") on the Lot. Pursuant to the Special R-2 Overlay Zoning District ("SR2-OD"), the Lot is subject to a "front yard" setback of fifteen feet (15') and a "back yard" setback of twenty-five feet (25'). *See* Zoning Ord. §156.315 (front setback of 15 feet for "SR2-OD"); Zoning Ord. § 156.303 (rear setback of 25 feet for zoning district R-2).

Importantly, the Lot is unique in two aspects. First, it is entirely landlocked in that it does not border a public street. Instead, it is accessible only by means of a private shared driveway which provides access to other landlocked lots on the block. Second, the Lot is uniquely shaped in that the East boundary, at 137.29', is longer than the West boundary, which is only 110.06' in length. (*See* Fig. 1 below). This is important because application of the larger 25' backyard setback (rather than the 15' front yard setback) to the longer East boundary reduced the buildable area of the Lot in violation of Section 156.007.

Fig. 1

PROCEDURAL HISTORY

Appellant wanted to add a porch to the eastern side of the house, however, on November 20, 2020, the Town's Planning and Development Department (the "Department") issued a determination, *via* email, that the East boundary would be considered the back and the West boundary would be considered the front. *See* **Exhibit B**. (Appellant's memorandum and exhibits submitted to the BZA). Appellant timely appealed the Department's decision to the BZA, arguing that the Department's decision was contrary to the plain language of Section 156.007 and inconsistent with the purpose for which the SR2-OD was created. *See* **Exhibit B**. A hearing was

held on January 25, 2021, and the BZA issued a written order the same day, which was mailed to the parties on January 26, 2021. (Exhibit A).²

THE CONTROLLING ORDINANCES & THE BZA's ORDER

The BZA determined this issue is controlled by 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.**

Zoning Ord. § 156.007 (emphasis added).

In its Order, the BZA additionally cites Section 156.315(E)(1) which concerns the SR2-OD and provides:

(E) *Lot, yard, height, and coverage requirements.* Development standards for SR2-OD shall be in accordance with the Residential Development Guidelines Table in § [156.303](#).

(1) *Minimum yard requirements.*
Front yard 15 feet

Zoning Ord. § 156.315(E)(1) (italics original).

In its Order, the BZA acknowledges that Section 156.007 dictates that the determination must be made “regardless of lot and building orientation” and acknowledges “the setbacks [are established] based on the lot dimensions, not lot or building orientation.” (Order p. 3).

² The caption of the Order misidentifies the owner and address of the subject property. Further it notes in the footer to be an “Order on Request for Variance” rather than an appeal from the decision of administrative official pursuant to Zoning Ord. § 156.411(A)(1). However, these typographical errors do not appear to affect the substance of the BZA’s Order.

Confoundingly however, it is precisely the lot and building orientation on which the BZA relies holding: “the actual front yard of 15 feet allowed by [§] 156.315 (E)(1), in our opinion, would be . . . the access easement side or primary façade of the principal structure designed as the ‘front.’” (Order p. 3). Further, the BZA ignores entirely that its finding decreases the buildable area, rather than increasing it as required by the ordinance. *See* Zoning Ord. § 156.007 (stating the determination should be made “so as to provide the greatest amount of buildable area”). This is reversible error.

ISSUE ON APPEAL

Where Section 156.007 of the Town’s Zoning Ordinance requires the determination of the front and back building lines be made “regardless of lot and building orientation [and] so as to provide the greatest amount of buildable area,” did the BZA err in determining the building lines based on lot and building orientation and in a manner that provides the least buildable area?

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

I. The BZA's Ruling is Inconsistent with the Plain Language of Section 156.007.

“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.”).

Here, the BZA's ruling contradicts the plain language of Section 156.007 because: (A) its decision does not “provide the greatest amount of buildable area;” and (B) the BZA failed to make its determination “regardless of lot and building orientation.” See Zoning Ord. § 156.007.

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

Section 156.007 plainly requires the determination to be made “so as to provide the greatest amount of buildable area.” Zoning Ord. §156.007. “Buildable Area” is defined as “[t]he maximum two-dimensional space on a lot within which a structure or structures can be built, as permitted by applicable setback[.]” Zoning Ord. §156.007. In other words, total lot area minus setback area.

There is no dispute that the North and South boundaries are subject to a side setback of ten (10) feet. The question then becomes, as between the East and West boundaries which is the front, and which is the back? Because “buildable area” is the total area of the Lot minus the setback areas, it becomes significant that the East boundary - at 137.29’ in length - is longer than the West boundary which measures only 110.06’. Thus, simple geometry demonstrates that applying the smaller front setback (i.e., 15’) to the East boundary provides more buildable area than applying the larger back setback (i.e., 25’) as the BZA did. Thus, the BZA’s ruling did exactly the opposite of what is required by the plain language of the ordinance. *Id.*³

Only by applying the front yard setback to the East boundary can the command to “provide the greatest amount of buildable area” be satisfied. 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 omitted); *see also State v. Zulfer*, 345 S.C. 258, 262-63,

³ Because the side setbacks are the same on both sides, the BZA’s error is illustrated by comparing the total front and back setback area produced by treating the East boundary as the back versus treating the East boundary as the front. Under the BZA’s interpretation which applies the 25’ backyard setback to the East boundary, the backyard setback area is 3,432.24 sq. ft. (i.e., 137.29’ x 25’ = 3,432.24’ sq.); the front yard setback area on the West boundary is 1,650.0 sq. ft. (i.e., 110.06’ x 15’ = 1,650.0’ sq.); and thus, the total front and back setback area is 5,083.15 sq. ft. (i.e., 3,432.24’ + 1,650.0’ = 5,083.15’ sq.). On the other hand, if the 10’ front yard setback is applied to the East boundary instead, there would be a front set back of 2,059.35’ sq, leaving a backyard setback area on the West boundary of 2,715.1.5’ sq., for a total front and back setback area of 4,810.85 sq. ft.

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].”).

B. 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.

Section 156.007 requires that the determination of the building lines be made “regardless of lot and building orientation.” However, lot and building orientation is precisely what the BZA based its decision on, reasoning that “the actual front yard of 15 feet allowed by [§] 156.315 (E)(1), in our opinion, would be . . . the access easement side or primary façade of the principal structure designed as the ‘front.’” (Order p. 3). As a threshold matter, because the requirements for establishment of building lines under Section 156.007 is clear and unambiguous, the BZA should not have sought to justify its finding by reference to other sections of the Code. *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.”).

Regardless, to the extent the BZA’s finding suggests that directive for determining building lines under Section 156.007 are ambiguous, or that Section 156.315 (E)(1) alters the provisions of Section 156.007, to permit the determination of building lines be made based on lot or building orientation, is an error of law. *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.”).

The BZA’s decision is also inconsistent with the purpose for which the Town created the SR2-OD. *See 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”). Specifically, the Town created the SR2-OD to, among other things, “allow for the continued construction, addition to, and renovation of homes located [there]. . . by creating a special overlay zoning classification **with flexible yard requirements.**” Zoning Ord. §156.310(A) (emphasis added). In serving this objective, Section 156.310 (E)(1) creates a minimum “front yard” requirement of fifteen (15) feet. While the BZA seems to assume that the term “front yard” is established by reference to lot and building orientation, that is not the case. The Ordinance specifically defines “front yard” to be “a yard between the front building line and the front lot line.” Zoning Ord. § 156.007. Thus, in defining “front yard” by reference to the building line, the “front yard” like the “building line” must be determined “regardless of lot or building orientation.” *See* Zoning Ord. § 156.007 (at “Building Line”). In other words, the front building line determines the front yard, not *vice versa*.

While the Town could have passed legislation that defined “front yard” by reference to the orientation of the building - i.e., such that the front yard be considered the yard adjacent to the front façade of the building - it did not. Thus, the BZA’s ruling is inconsistent with the clear legislative intent of the Ordinance. *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”).

CONCLUSION

For these reasons,⁴ the BZA’s Order must be reversed and the East boundary be established as the front rather than the back of Appellant’s Lot.

[signature to follow]

⁴ Appellant incorporates those arguments presented at the BZA hearing on January 25, 2021 and reserves the right to supplement the arguments herein upon receipt of the transcript. Appellant further reserves the right of reply to any argument advanced by the Respondent.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

By: s/ TJ Rode
THOMAS J. RODE
MICHAEL A. TIMBES
15 Middle Atlantic Wharf
Charleston, South Carolina 29401
Phone: 843-937-8000
Fax: 843-937-4200
Email: thomas@tktlawyers.com
Attorneys for Plaintiff

February 18, 2021
Charleston, South Carolina



**BOARD OF ZONING APPEALS
FINAL ORDER**

Mr. Thomas Rode, Esq.
Thurmond, Kircher, & Timbes, PA
15 Mid. Atlantic Wharf
Charleston, SC 29401
Applicant

Mr. and Mrs. Jeffery Winterfield
32 Montrose Road
Mount Pleasant, SC 29464
Owner

CASE A-2-2021

520 Whilden Street
TMS# 532-01-00-271

Appeal of the Zoning Official's determination establishing the west boundary as the front yard. Applicant contends that the determination improperly alters the setbacks and fails to provide the greatest amount of buildable area as required by the Zoning Code and prevents an addition to residence. The applicant contends that the correct interpretation of the particular Zoning Code section is to determine that the East boundary is the "front".

The Town of Mount Pleasant Board of Zoning Appeals held a public meeting on January 25, 2021.

After consideration of the evidence and arguments presented, the board makes the following findings of fact and conclusions of law:

Law 1: § 156.411 POWERS; VARIANCES; SPECIAL EXCEPTIONS; STAYS; HEARINGS, DECISIONS AND ORDERS.

(A) **Powers.** The Board of Zoning Appeals shall have all of the powers, duties and responsibilities as set forth in S.C. Code §§ 6-29-310 through 6-29-860, as amended, unless otherwise stated herein. Specifically, the Board has the following powers:

(1) To hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;

(5) Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county.

(a) The appeal must be taken within 30 days from the date the appealing party has received actual notice of the action from which the appeal is taken, by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for appeal.

FACT 1: The applicant received an email letter from Principal Planner, Mr. Michael Robertson, on November 20, 2020, stating the rationale for determining the "Front Yard" (Exhibit 1, page 6 of PDF submittal).

FACT 2: The applicant filed an appeal of the Zoning Official's decision on December 18, 2020.

***STAFF COMMENT:** The appeal was filed within 30 days from the date the appealing party received actual notice of the action from which the appeal is taken by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for the appeal.*

DETERMINATION BY ZONING OFFICIAL

1. Can the 'rear yard' be counted as the front yard? This was the initial question asked with regard to the enclosed rear porch.

156.007 Definitions

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.

156.315 SR2-OD; Special R-2 Overlay District.

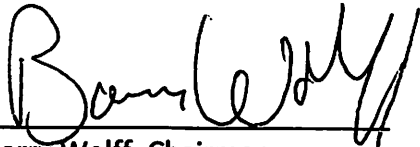
(E) *Lot, yard, height, and coverage requirements.* Development standards for SR2-OD shall be in accordance with the Residential Development Guidelines Table in § 156.303.

(1) *Minimum yard requirements.*

Front yard 15 feet

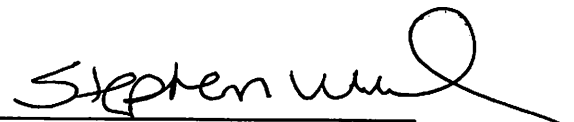
Although the definition notes that the setbacks are applied 'regardless of lot and building orientation', the phrase is used in the context of establishing the setbacks based on the lot dimensions, not lot or building orientation. If the longer dimension was on the street and the shorter dimension was 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 156.315 E.1, 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'.

THE BOARD, THEREFORE, ORDERS that the Appeal is denied and the decision of the Zoning Official is affirmed.


Barry Wolff, Chairman

Megan Finch-Stevens

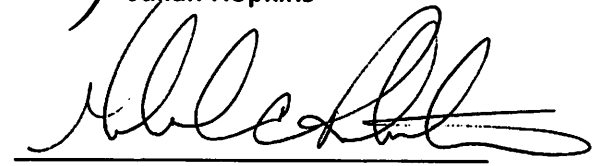

Beth Santilli


Stephen Wood


Elliott Barrow


Stephen Duke


Julian Hopkins


Secretary

Date Final Order Signed: January 25, 2021

Date mailed to parties in interest: 1-26-21

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.

TOWN OF MOUNT PLEASANT	)	BOARD OF ZONING APPEALS
	)	<i>TMS No. 532-01-00-271</i>
	)	
<i>in Re: 520 Whilden St.</i>	)	
	)	
in which,	)	Notice of Appeal
	)	
The Wolfe Marie Vernon Trust is,	)	
	)	
Appellant.	)	

COMES NOW the Appellant, who pursuant to S.C. Code Ann. §§ 6-29-310 *et. seq.*, and Section 156.411 of the Town of Mount Pleasant Code of Zoning Ordinances, does herein appeal the November 20, 2020, order/decision of the Planning and Development Department of the Town of Mount Pleasant, (the “Order”) and for the reasons stated herein, together with the arguments and evidence that may be presented to this Honorable Board at a hearing, shall show the Order should be reversed.

PROCEDURAL HISTORY

1. By deed recorded with the Charleston County Register of Deeds at Book 0776, Page 902, Appellant is the record owner of that certain parcel of real property commonly known as 520 Whilden Street, and more specifically known to the Charleston County Tax Assessor by TMS No. 532-01-00-271 (the “Lot”).

2. The Lot is in the Town of Mount Pleasant and in the Special R-2 Overlay Zoning District. *See* §156.315 (establishing the “SR2-OD”).

3. On November 20, 2020, The Planning and Development Department of the Town of Mount Pleasant (the “Department”), issued an order/decision *via* email, (“the Order”) which is attached hereto as **Exhibit 1**.

INTRODUCTION & QUESTION PRESENTED

The Lot is subject to a setback of fifteen (15) feet on the “front,” and twenty-five (25) feet from the “back.” *See* Ord. § 156.303 (rear setback of 25 feet for zoning district R-2) & §156.315 (front setback of 15 feet for the Special R-2 Overlay District –“SROD-R-2”).

Owner is planning an addition to the East side of the residence on the Lot, which would extend, at its nearest point, to be 16’2 ¾” from the East Lot Line.¹ *See* (**Exhibit 2** at p. 2). Although the residence is oriented otherwise, these plans were made to be consistent with the East side of the Lot being the “front” (i.e., subject to a 15’ setback). However, although the Department agreed the orientation of the house was immaterial, it nonetheless applied the definition of “Building Line (includ[ing] Setback)” from §156.007 to find the East side of the Lot is the “back,” rather than the “front,” and therefore subject to the larger 25’ setback. *See* Order.

The question here is whether the East is the front or back yard pursuant to §156.007 of the Zoning Code. As articulated below, it is the front, and therefore this Honorable Board should reverse the Department’s Order.

ARGUMENT

1. The District Misinterpreted § 156.007 and Improperly *Reduced* the Buildable Area of the Lot, this being Contrary to the Plain Language of the Ordinance.

Section 156.007 of the Zoning Code 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.**

(emphasis added)

¹ *See* Ord. §156.007 (defining “Lot Line” as the legal boundary of the property).

The Department omitted from its analysis that the identification of the front and back under this section of the Ordinance should serve to provide “the greatest amount of buildable area.” *Id.* It also failed to consider that the lot and building orientation must be disregarded in establishing front and back yards in a way that will accomplish the goal of creating the greatest amount of buildable area. This makes a difference in this particular case, and therefore was error.

Here, the East boundary spans a distance of 137.29 feet while the West boundary totals a shorter 110.06 feet. Thus, because the East boundary is the longer of two, applying the 25’ backyard setback to the East side necessarily results in a greater portion of the Buildable Area of the Lot being rendered “unbuildable” than if the 15’ front yard setback were applied to the East side. *See* Ord. §156.007 (defining “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 and buffer requirements”). Under the Department’s interpretation of §156.007 in which the East side is treated as the back, the total area of front and back setbacks is 5,083.15 square-feet. Alternatively, if the East side is properly considered the front, the total area of front and back setbacks is a lesser 4,810.85 square feet.²

Therefore, in order to “provide the greatest amount of buildable area” the East side must be considered the front. *See* Ord. §156.007 (defining “building Lines”). Consequently, the Department’s finding is contrary to the plain language of the Zoning Ordinance and must be reversed. *Id.*

² The side setbacks remain 10 feet on both sides regardless of whether the East is treated as the front or back. *See* Ord. § 156.303. Moreover, even if the additional 24.12 feet of frontage created by the in the property line along the South side were considered part of the West boundary, making this boundary 134.18 feet, it would remain that the Department’s interpretation still reduces the Buildable Area to a greater degree than considering the East boundary as the front.

2. Finding the East side to be the Back is Inconsistent with the Purpose of Creating the SR2-OD.

The stated purpose for which the Town created the SR2-OD is “to allow for the continued construction, addition to, and renovation of homes located [there]. . . by creating a special overlay zoning classification **with flexible yard requirements.**” Ord. §156.310(A); *accord* §156.310(B)(3) (contemplating the creation of this overlay district would “enable homeowners to add porches as well as increased living space to homes that are currently at or over the 25-foot front yard setback required in R-2 Districts”).

Therefore, and contrary to the Department’s finding, a determination that the East boundary is the front is not only compelled by the plain language of §156.007, but is also consistent with stated purpose for which the Town created the SR2-OD in the first place.

CONCLUSION

For the reasons stated above, this Honorable Board should **reverse** the Department’s Order and find that the East boundary is the “front” with a 15’ setback.³

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

By: s/ TJ Rode
 THOMAS J. RODE SC Bar No. 77480
 15 Middle Atlantic Wharf
 Charleston, South Carolina 29401
 Phone: 843-937-8000
 Fax: 843-937-4200
 Email: thomas@tktlawyers.com
Attorneys for Plaintiff

Charleston, South Carolina

³ Owner asserts that reversal shall also operate to vacate the Department’s finding listed as “2” in the Order regarding the fireplace location to the extent it relies upon the East boundary being the back.

EXHIBIT 1Appeal re: *TMS No. 532-01-00-271*

From: Mike Robertson <MRobertson@tompsc.com>
Subject: RE: 520 Whilden Street - side setback question
Date: November 20, 2020 at 12:27:27 PM EST
To: Cintra McGauley <cintra@herlongarchitects.com>, Steve Herlong <steve@herlongarchitects.com>
Cc: Brooke Gerbracht <brooke@herlongarchitects.com>

I spoke to the Zoning Administrator and we reviewed all of the requests to date.

1. Can the 'rear yard' be counted as the front yard? This was the initial question asked with regard to the enclosed rear porch.

156.007 Definitions

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.

156.315 SR2-OD; Special R-2 Overlay District.

(E) *Lot, yard, height, and coverage requirements.* Development standards for SR2-OD shall be in accordance with the Residential Development Guidelines Table in § [156.303](#).

(1) *Minimum yard requirements.*

Front yard 15 feet

Although the definition notes that the setbacks are applied 'regardless of lot and building orientation', the 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 156.315 E.1, 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 principle structure designed as the 'front'.

You can appeal this decision to the Board of Zoning Appeals, Appeal of Decision of Zoning Official. You would have 30 days from the date of this email to file the appeal. You may also request a variance to allow the rear yard encroachment. There is no time constraint for requesting a variance to allow the rear yard encroachment as there is with an appeal of an administrative decision. The next regularly scheduled meeting of the Board of Zoning Appeals is January 25, 2021. The submittal date for the January 25 meeting is January 4, 2021. Submittals are made online and must be received on or before 11:59 PM.

EXHIBIT 1Appeal re: *TMS No. 532-01-00-271*

2. Can the fireplace be located on the end of the deck as shown on plan provided.

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

(A) *General.*

(3) Uncovered porches and uncovered decks may encroach into a required rear or side yard not more than 40% of the required setback, but no closer than three feet from the property line; except that when a zero-lot line provision is in effect, the 40% reduction shall apply to the minimum required distance between structures. No additional encroachments for outside stairways shall be permitted.

The uncovered deck may project into the rear yard 40% of the required setback as noted above; however, the chimney must meet the requirements of:

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

(A) *General.*

(1) Items such as but not limited to sills, eaves, belt courses, window air-conditioning units, chimneys, cornices, ornamental features, and bay windows may protrude into a required yard a distance not to exceed 24 inches; provided, however, the bay window projection is limited to maximum span length of ten feet along the exterior wall of the building.

156.107 A.1 only allows the chimney to project into a required rear yard for a distance not to exceed 24 inches.

Again, this interpretation may be appealed to the Board of Zoning Appeals or a variance may be requested. The appeal must be filed within 30 days of the date of this email. A variance may be requested at any time. The next regularly scheduled meeting of the Board of Zoning Appeals is January 25, 2021. The submittal date for the January 25 meeting is January 4, 2021. Submittals are made online and must be received on or before 11:59 PM.

3. Can the awning over the side door project into the side yard approximately four feet?

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

(A) *General.*

(2) Items such as but not limited to open fire escapes; elevators; outside stairways leading to a building entrance, but not to an uncovered porch or deck; balconies; and outside air-conditioning units and propane/heating oil tanks may be permitted to project into the required yard for a distance of not more than four feet, when so placed as to not obstruct light and ventilation, but in no case closer than three feet from the property line.

Outside stairways leading to an uncovered porch or deck may project into the required yard for a distance of not more than four feet.

(A) *General.*

EXHIBIT 1

Appeal re: *TMS No. 532-01-00-271*

(1) Items such as but not limited to sills, eaves, belt courses, window air-conditioning units, chimneys, cornices, ornamental features, and bay windows may protrude into a required yard a distance not to exceed 24 inches; provided, however, the bay window projection is limited to maximum span length of ten feet along the exterior wall of the building.

Eaves of the building may project into the required yard for a distance not to exceed twenty four inches.

If an awning is desired, it would require a variance to allow it to project and for the stairs to project into a required yard when accessing a covered porch or deck.

Again, this decision can be appealed as noted in 1 and 2 or you can request a variance at any time.

I hope this helps. I know you have studied many options to avoid pursuing a variance. As always, I'm more than happy to discuss any ideas you have in order to meet the requirements. Also, it is your right to request a variance. If you decide to pursue a variance, I'd be more than happy to review the requirements with you with regard to whichever option(s) you wish to pursue.

Do not hesitate to let me know how I can help you and your client get this resolved satisfactorily.



Michael C. Robertson, AICP
Principal Planner
Planning & Development Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464

mrobertson@tompsc.com
843-884-1229

P.S. We want to hear from you about how our department is doing! Please take a few minutes to complete our [online satisfaction survey](#) and give us your thoughts. Thanks!

Exhibit 2
Charleston County SC
Appeal re: TMS No. 532-01-00-271

Charleston County GIS Charleston County ROD Charleston County Home Page

▼ Enter address, road, parcel # or 🔍

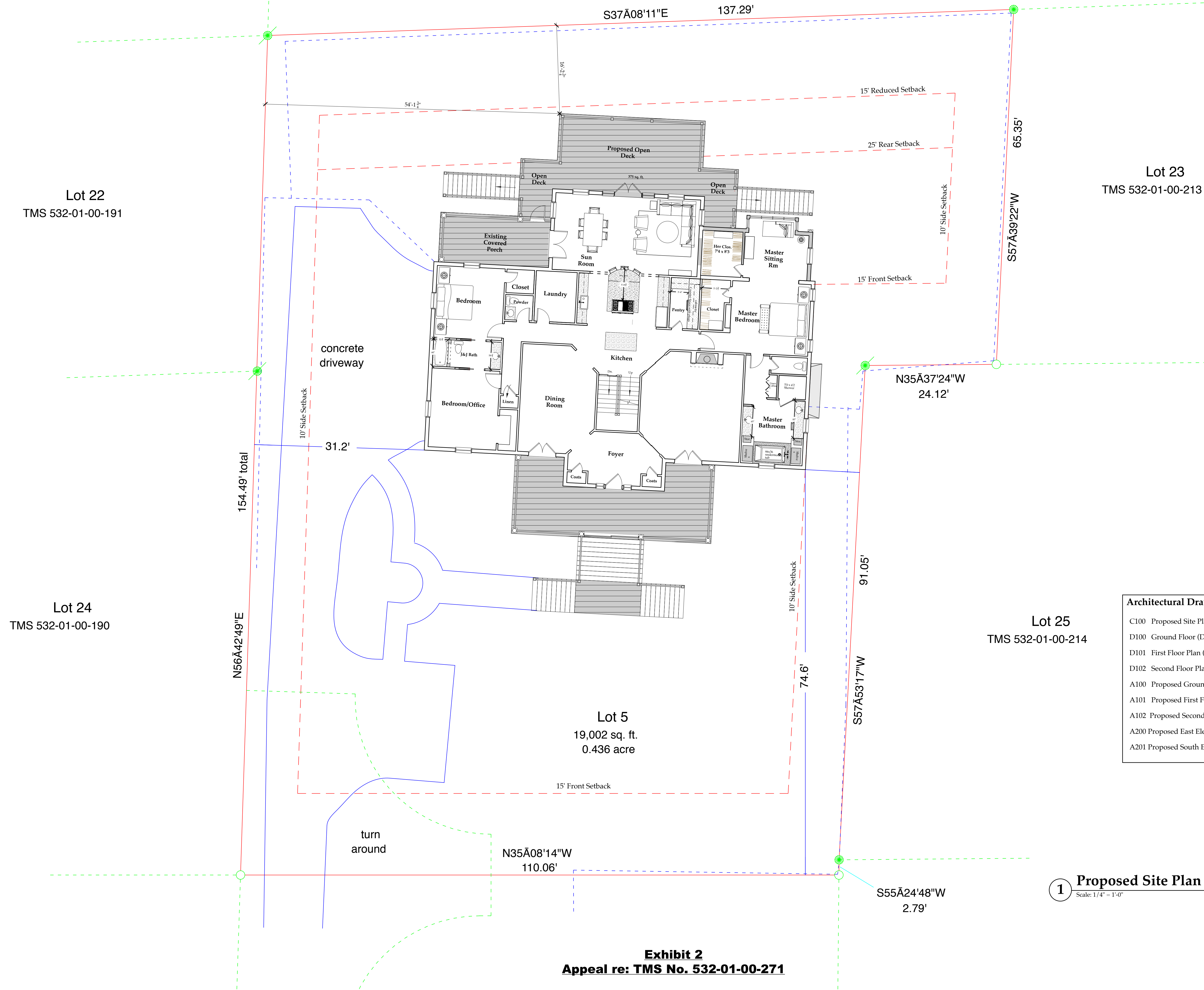
Charleston County GIS Viewer



Charleston County GIS, Eagleview | Charleston County SC

Powered by Esri

Exhibit 2
Appeal re: TMS No. 532-01-00-271



Lord Residence
520 Whilden
Mount Pleasant, SC



Plot Date	12/2/20
Project No.	
Drawn	
Drawing Title	Site Plan

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

IN RE: 520 WHILDEN ST.
IN WHICH,

) CASE NO. 2021-CP-10-00785
)

THE WOLFE MARIE VERNON TRUST,

)

THE APPELLANT,

)

VS.

)

THE TOWN OF MOUNT PLEASANT
AND THE MOUNT PLEASANT
BOARD OF ZONING APPEALS,

)
)
)

THE RESPONDENTS.

)

**NOTICE OF OPPOSITION TO APPEAL
AND SUBMISSION OF THE RECORD
BEFORE BOARD OF ZONING APPEALS**

TO: THOMAS J. RODE, ESQ. and MICHAEL A. TIMBES, ESQ., THURMOND KIRCHNER & TIBES, P.A., ATTORNEYS FOR APPELLANT THE WOLFE MARIE VERNON TRUST.

YOU WILL PLEASE TAKE NOTICE that the Respondent, the Town of Mount Pleasant (hereinafter "Town"), and the Mount Pleasant Board of Zoning Appeals (hereinafter "BZA"), by and through the undersigned counsel, will respond in opposition to this appeal at the next term of court or as soon as counsel may be heard, and will request that this Court uphold the decision of the BZA on the grounds that the decision is correct as a matter of law. Respondent, pursuant to S.C. Code Ann. § 6-29-830(A), hereby submits a copy of the BZA's full record in this matter: (EXHIBIT A, The BZA's Final Order); (EXHIBIT B, Application of Appeal with Exhibits and documents submitted by applicant); (EXHIBIT C, Zoning Official emails constituting the Record of the Zoning Official); (EXHIBIT D, The Agenda for the BZA Hearing January 25, 2021); (EXHIBIT E, The Minutes for the BZA Hearing January 25, 2021).

Summary of Argument in Opposition

Appellant's existing home sits too close to the rear set back line of their property to build a

rear addition. Appellant, therefore, seeks to declare the back yard of their property the “front” in order to gain additional buildable area on the rear side of their lot. The Town denied Appellant’s request and the BZA affirmed. Appellant now asks this Court to overrule the BZA’s decision.

Appellant’s argument distorts the code definition of the term “Building Line” contained in Town of Mount Pleasant Ordinance provision §156.007. Appellant argues that the definition precludes the Town from declaring the front side of Appellant’s property the “front yard” because, according to the Appellant, the Town must make these orientation declarations in a manner that maximizes the property owner’s buildable area.

Appellant is wrong. The definition provision upon which Appellant’s argument relies is irrelevant to determining the “front” vs. the “rear” of the property. The definition provision at issue in no way prohibits the Town from declaring the true front as the “front” of the property. The BZA correctly affirmed the Town’s decision that the rear setback requirement applies to the “rear” of Appellant’s property, and therefore this Court should uphold the BZA’s decision.

Respondent’s opposition to this appeal will be further supported by a Memorandum in Opposition containing citation to applicable case law and statutory law authorities, which the Court may receive or require in advance of the hearing on this matter.

<<ATTORNEY SIGNATURE ON FOLLOWING PAGE>>

CLEMENT RIVERS, LLP

By: s/ Brian L. Quisenberry

Brian L. Quisenberry, Esq. S.C. Bar # 73637

E-mail: bquisenberry@ycrlaw.com

Zachary M. Kern, Esq. S.C. Bar #103731

E-mail: zkern@ycrlaw.com

P.O. Box 993, Charleston, SC 29402-0993

25 Calhoun Street, Suite 400, Charleston, SC 29401

Telephone: (843) 724-6641

Fax: (843) 579-1331

Attorneys for the Respondents

Charleston, South Carolina

Dated: March 19, 2021

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 19th day of March, 2021.

s/ Brian L. Quisenberry

EXHIBIT A

(The BZA's Final Order)

Pages of this Exhibit Omitted As Duplicative.

See BZA Order *supra*.

EXHIBIT B

**(Application of Appeal with Exhibits and Documents
Submitted by Applicant)**

Board of Zoning Appeals Appeal From Decision of Zoning Official Application

A Property Owner Acknowledgement Form must be submitted with the application.

ALL ONLINE APPLICATIONS ARE DUE BY 11:59 p.m. ON THE DEADLINE DATE. *It is highly recommended that the property owner and/or a representative meet with staff prior to submitting an application.*

Nature of Request & Fees

Notice of Appeal from Action of a Zoning Official
\$200.00

Requirements

All supplemental information must be submitted in a single PDF file with this application.

An accurate, legible plot plan showing property dimensions and locations of structures and improvements must be attached to an application for variance or special exception.

The following supplemental information is included with this application (please list):*

Memorandum and Two Exhibits.

Please attach supplemental information outlined above:*

Appeal w Exhibits - 520 Whilden St.pdf

Applicant Information

Applicant(s)* Thurmond Kircher & Timbes, PA
Address:* 15 Mid. Atlantic Wharf, Charleston, SC 29401
Daytime Phone:* 8439378000 Email: thomas@tktlawyers.com

Owner Information (if other than applicant)

Owner(s): The Wolfe Marie Vernon Trust
Address: 520 Whilden St. Mount Pleasant, SC
Daytime Phone: Email:

Property Information

Street Address:* 520 Whilden St.
Lot: Block:
Subdivision: Tax Map No:* 532-01-00-271
Plat Book: Page:
Zoning District:* SR2-OD

Designation Information (complete only if owner is not applicant)

I (we) hereby appoint the person named as Applicant as my (our) agent to represent me (us) in this application.

Date: 12/18/2020

Owner: The Wolfe Marie Vernon Trust Owner:

1. Applicant appeals to the Board of Zoning Appeals from the action of the Zoning Official affecting the the property described in the Notice of Appeal on the grounds **Granting** or **Denial** (indicate below) *

☐ Granting ☒ Denial
of an application for a permit to:

was erroneous and contrary to provisions of Zoning Code Section:

OR

Applicant hereby appeals to the Board of Zoning Appeals from the following action or decision of the Zoning Official:
Determination that East boundary is the "back" and therefore subject to back yard setbacks.

which was erroneous and contrary to provisions of Zoning Code Section:
§156.007 and §156.310

2. Applicant is aggrieved by the action or decision in that:

It improperly alters setbacks and fails to provide the greatest amount of buildable area as required by Zoning Code and prevents addition to residence.

3. Applicant contends that the correct interpretation of the particular Zoning Code Section is:
Determine the East boundary is the "front."

4. Applicant requests the following relief:

Determination that §156.007 and §156.310 compel finding the East boundary is the "front"

Development Approval Application (Permit) Recorded Covenant Affidavit

I, the undersigned, serve as the owner and/or owner's representative and certify that the information contained herein to be true and accurate. I further certify that the tract(s) or parcel(s) of land to which this approval request pertains:*

☐ Is Restricted

☒ Is Not Restricted

by any recorded covenant that is contrary to, conflicts with, or prohibits the activity for which approval is sought as provided in SC Code of Laws Section 6-29-1145, and the Town of Mount Pleasant Code of Ordinances §155.084 and §156.048.

Electronic Signature

certify that I am the owner or serve as the owner's representative and am duly authorized to complete this application. I certify that all information required for review of this submittal is included. If an application is found to be incomplete, the primary contact will be notified and the application removed from the agenda.* I understand that selecting the box below will serve as my electronic signature.*

☒ I agree

Information of person completing electronic signature

Name:* Thomas Rode

Date: 12/18/2020

Address (if different from above): 15 Mid. Atlantic Wharf

Email:

thomas@tktlawyers.com

Phone:*

8439378000

PROPERTY OWNER ACKNOWLEDGEMENT FORM Please upload this form containing the original signature of the property owner, which verifies the applicant is acting with the owner's permission.

Owner Signature Form for Boards-Cmsns (1)_2.pdf

* indicates required fields.

Remaining Pages of Exhibit Omitted as Duplicative

See Appellant's Notice of Appeal Filed with BZA on
12/18/20. *Supra*

EXHIBIT C

**(Zoning Official Emails Constituting the Record of the
Zoning Official)**

From: Mike Robinson
 To: Laura Mulcahy, Steve Hensley
 Cc: Steven Goldblatt
 Subject: RE: 520 Whilden Street - side setback question
 Date: Friday, November 20, 2020 12:26:00 PM
 Attachments: [Screenshot](#)
[Screenshot](#)

I spoke to the Zoning Administrator and we reviewed all of the requests to date.

1. Can the 'rear yard' be counted as the front yard? This was the initial question asked with regard to the enclosed rear porch.

156.007 Definitions

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(E) *Lot, yard, height, and coverage requirements.* Development standards for SR2-OD shall be in accordance with the Residential Development Guidelines Table in § ~~156.315~~.

- (1) *Minimum yard requirements.*

Front yard 15 feet

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2. Can the fireplace be located on the end of the deck as shown on plan provided.

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

- (A) *General.*

(3) Uncovered porches and uncovered decks may encroach into a required rear or side yard not more than 40% of the required setback, but no closer than three feet from the property line; except that when a zero-lot line provision is in effect, the 40% reduction shall apply to the minimum required distance between structures. No additional encroachments for outside stairways shall be permitted.

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- (A) *General.*

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156.107 A.1 only allows the chimney to project into a required rear yard for a distance not to exceed 24 inches.

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§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

- (A) *General.*

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- (A) *General.*

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Do not hesitate to let me know how I can help you and your client get this resolved satisfactorily.



Michael C. Robertson, AICP
Principal Planner
Planning & Development Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464

mrobertson@tompssc.com
843-884-1229

P.S. We want to hear from you about how our department is doing! Please take a few minutes to complete our online satisfaction survey and give us your thoughts. Thanks!

From: Cintra McGauley <cintra@herlongarchitects.com>
Sent: Wednesday, November 18, 2020 4:26 PM
To: Steve Herlong <steve@herlongarchitects.com>
Cc: Mike Robertson <MRobertson@tompssc.com>; Brooke Gerbracht <brooke@herlongarchitects.com>
Subject: Re: 520 Whilden Street - side setback question

Hi Mike,

Were you able to get any feedback on this from your zoning administrator?

Let us know if you need more information.

Thanks!
Cintra

HERLONG INTERIORS
ARCHITECTS HERLONG

Cintra Sedalik | Interior Designer

Herlong Architects
2014 Market Street
Sullivan's Island, SC
29485-8801
P 843.884.9191

www.herlongarchitects.com

Facebook | Houzz | Pinterest | Instagram

On Nov 12, 2020, at 10:50 AM, Steve Herlong <steve@herlongarchitects.com> wrote:

Mike,

Attached is an exterior elevation of the deck with the fireplace and chimney.

Steve

On Nov
<Lord Deck Elevation.pdf>
12, 2020, at 7:33 AM, Mike Robertson <MRobertson@tompssc.com> wrote:

Steve,

Thanks. The deck can extend, I'm not certain about the fireplace though. Can you send an elevation--it can be schematic, that I can forward to our Zoning Administrator for an interpretation?

Michael C. Robertson, AICP
Principal Planner
Planning & Development Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464



mrobertson@lonipsc.com
843-884-1229

P.S. We want to hear from you about how our department is doing! Please take a few minutes to complete our online satisfaction survey and give us your thoughts. Thanks!

From: Steve Herlong <steve@herlongarchitects.com>
Sent: Wednesday, November 11, 2020 3:48 PM
To: Mike Robertson <MRobertson@lonipsc.com>
Cc: cintra McGauley <cintra@herlongarchitects.com>
Subject: Re: 520 Whilden Street - side setback question

This message originated outside our organization. Use caution when clicking links or opening attachments.

Good afternoon Mike,

After receiving your response and seeing the possibility of having a deck with a reduced rear setback, we wanted to show you this option for a deck with a fireplace on it within the reduced setback of 15'. Does this comply?

Regards,

Steve

On Nov 9, 2020, at 8:21 AM, Mike Robertson <MRobertson@lonipsc.com> wrote:

Steve,

Modifications of Yard Regulations (A)(1) allows eaves to project no more than 24 inches into a required setback. We would need to check with the Zoning Administrator to see if the awning would be allowed. The language states "such as but not limited to..." which may allow it. If 24 inches will work for you, I'll forward the request.

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

(A) General.

(1) Items such as but not limited to sills, eaves, belt courses, window air-conditioning units, chimneys, cornices, ornamental features, and bay windows may protrude into a required yard a distance not to exceed 24 inches; provided, however, the bay window projection is limited to maximum span length of ten feet along the exterior wall of the building.

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(3) Uncovered porches and uncovered decks may encroach into a required rear or side yard not more than 40% of the required setback, but no closer than three feet from the property line; except that when a zero-lot line provision is in effect, the 40% reduction shall apply to the minimum required distance between structures. No additional encroachments for outside stairways shall be permitted.

<image001.png>

Michael C. Robertson, AICP
Principal Planner
Planning & Development Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464

mrobertson@lonipsc.com
843-884-1229

P.S. We want to hear from you about how our department is doing! Please take a few minutes to complete our online satisfaction survey and give us your thoughts. Thanks!

From: Steve Herlong <steve@herlongarchitects.com>
Sent: Friday, November 6, 2020 11:26 AM
To: Mike Robertson <MRobertson@lonipsc.com>
Cc: cintra McGauley <cintra@herlongarchitects.com>
Subject: 520 Whilden Street - side setback question

This message originated outside our organization. Use caution when clicking links or opening attachments.

Hi Mike,

Thanks for your information regarding the "front/rear" setback questions.

We have what we think is a simpler question today. As you can see in the site plan below, the existing house is constructed on the 10' side setback. The owners want to construct an awning to protect a door on that side wall (shown in red). I would assume that roof overhangs would be allowed in the setback but would an awning be considered a roof overhang? And what is the amount of roof overhang that is allowable?

Regards,

Steve

Begin forwarded message:

From: Cintra McGauley <cintra@herlongarchitects.com>
Subject: Re: Lord plans on top of survey
Date: November 6, 2020 at 10:08:36 AM EST
To: Steve Herlong <steve@herlongarchitects.com>

this is where the new exterior doors would be as we drew them so as you can see it would be on the tight side of the side setback. I wonder if overhangs from Awnings are okay though? We can't really move the exterior doors down at all..

<image002.png>

On Nov 5, 2020, at 1:50 PM, Steve Herlong <steve@herlongarchitects.com> wrote:

<Lord Porch.PC9>
<Lord Porch Addition.pdf>

On Nov 5, 2020, at 1:31 PM, Cintra McGauley <cintra@herlongarchitects.com> wrote:

Could you send me the PCADD file where you created the plans on an overlay of the survey? I want to see where the awning may come in to see if we need to ask Mike about that..

Steve Herlong | AIA Architect, Design Principal

<EMAIL-SIG7.png>

Herlong Architects
2214 Middle Street
Sullivan's Island, SC
W 843.883.9190
F 843.863.9191

www.herlongarchitects.com

[Facebook](#) | [Houzz](#) | [Pinterest](#) | [Instagram](#)

Steve Herlong | AIA Architect, Design Principal

<image003.png>

Herlong Architects
2214 Middle Street
Sullivan's Island, SC
W 843.883.9190
F 843.863.9191

www.herlongarchitects.com

[Facebook](#) | [Houzz](#) | [Pinterest](#) | [Instagram](#)

Steve Herlong | AIA Architect, Design Principal

<EMAIL-SIG7.png>

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[Facebook](#) | [Houzz](#) | [Pinterest](#) | [Instagram](#)

Steve Harlong | AIA Architect, Design Principal

<EMAIL-SIG7.png>

Harlong Architects
2214 Middle Street
Sullivan's Island, SC
W.843.883.9190
F.843.883.9191

www.harlongarchitects.com

[Facebook](#) | [Houzz](#) | [Pinterest](#) | [Instagram](#)

EXHIBIT D

(The Agenda for the BZA Hearing January 25, 2021)



**BOARD OF ZONING APPEALS
REVISED MEETING NOTICE
Mount Pleasant Town Hall Council Chambers
100 Ann Edwards Lane
January 25, 2021
6:00 PM**

*NOTE: Items in blue are hyperlinks to submittals and additional information.
Some documents are large and may take a few moments to load.
Green arrows > in Minutes are hyperlinks to the recording.*

- A. Roll Call**
- B. Approval of Agenda**
- C. Approval of Minutes**
- D. Public Comment**
- E. General Correspondence**
Request for one-year extension of Case V-41-05 in accordance with §156.049
- F. Explanation of Procedures**
- G. Administration of Oath**
- H. Business**

STAFF REPORT

- 1. ~~WITHDRAWN BY APPLICANT Case V-36-2020, 1506 Checker Court, TMS# 583-03-00-366, Request for relief from the strict application of PD to allow a 5-foot side yard encroachment. The PD Ordinance requires a 10-foot side yard. Correspondence~~**
- 2. Case V-38-2020, 262 Commonwealth, TMS# 596-08-00-260, Request for relief from the strict application of 156.111 to allow a 1,225 sq. ft. footprint accessory structure, 26-feet, 3 ½ inches in height. The ordinance allows a maximum 750 sq. ft. footprint for an accessory structure, 18-feet in height.**
- 3. Case A-1-2021, 32 Montrose, TMS# 517-06-00-732. Appeal of the Zoning Administrator's determination that the property is an "All Yard Building" in accordance with the provisions of the I'On Code Planned Development Ordinance. Applicant contends that the lot should be**

designated a "Rear Yard Building" based on previous site plan approvals and correspondence with the Planning Department.
Record of Zoning Administrator

4. **Case V-3-2021, 32 Montrose, TMS# 517-06-00-732**, Request for relief from the strict application of the I'On Code to allow development of the lot as a Rear Yard Building or 47% building coverage for an All Yard Building type. The I'On Code Planned Development ordinance limits All Yard Building types to 40% building coverage. The applicant contends previous development plans applied Rear Yard Building standards to the lot.
5. **Case V-1-2021, 1896 N. James Gregarie Rd., TMS# 549-12-00-163**, Request for relief from the strict application of §156.106 to allow an approximately 500 square foot impervious surface for an accessory use encroachment into the 30-foot DHEC-OCRM critical line impervious area setback.
6. **Case A-2-2021, 520 Whilden Street, TMS# 532-01-00-271**, Appeal of the Zoning Official's determination establishing the west boundary as the front yard. Applicant contends that the determination improperly alters the setbacks and fails to provide the greatest amount of buildable area as required by the Zoning Coe and prevents an addition to residence. The applicant contends that the correct interpretation of the particular Zoning Code section is to determine that the East boundary is the "front".
Record of Zoning Official
7. **Case A-3-2021, 3 William Street, TMS# 532-13-00-133**, Appeal of the Zoning Official's determination that items that have been withdrawn may not be refiled for six months in accordance with the Board of Zoning Appeals Rules of Procedures adopted on January 27, 2020. Applicant requests a hearing within the six-month timeframe.
Record of Zoning Official
8. **Case V-2-2021, 153 Ponsbury Rd., TMS# 535-06-00-154**, Appeal of the strict application of the I'On Code Planned Development to allow lot classification as a Rear Yard Lot with 60% lot coverage and 3-foot side yard setback. Applicant wishes to combine two lots to create a single lot which changes the lot classification to All Yard Lot type which allows 40% lot coverage and requires a 5-foot side yard setback. Additionally, the applicant requests relief from the strict application of § 156.142 (C)(2) to allow repairs and improvements greater than 50% while maintaining 3-foot side yard setback. The ordinance requires

nonconforming structures and uses improved by more than 50% to be brought into conformance with all applicable sections of the zoning code. Correspondence

9. Case V-4-2021, 1458 Fiddlers Marsh, TMS# 532-16-00-003, Request for relief from the strict application of §156.226 seeking to forego 9.5 inches in additional tree mitigation as required under Tree Protection Ordinance. The ordinance required 17.5 inches (50%) mitigation for the removal of a 19-inch live oak and 16-inch live oak.
- I. **Approval of Final Orders**
- J. **Re-adoption of Rules of Procedure**
- K. **Election of Officers**
- L. **Executive Session, Case S-2-2020, Bowman Road & Hospital Drive, TMS# 559-00-00-070**, Request for Special Exception in accordance with the provisions of Section 156.326 (C) Use Conditions (5) Commercial Uses (g) Gas Station as allowed in 156.318 (D)(5)(d).
- M. **Adjournment**

Title VI Notice: The Town of Mount Pleasant fully complies with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and related statutes and regulations in all programs and activities. Town meetings are conducted in accessible locations, materials can be provided in accessible formats, and provided in languages other than English. If you would like accessibility or language accommodation, please contact the Title VI Coordinator one week in advance of the meeting, at the Town of Mount Pleasant at 843-884-8517.

RESOURCE LINKS

[Explanation of BOZA Process](#)
[Comprehensive Plan](#)
[Online Document Library](#)
[Use Table](#)
[Zoning Map \(interactive\)](#)

[Case Law Notes](#)
[Future Land Use Map](#)
[Projects and Applications Map](#)
[Zoning Code \(PDF\)](#)

**NOTE: Correspondence must be received no later than 4:30 PM,
 January 20.**

EXHIBIT E

(The Minutes for the BZA Hearing January 25, 2021)

**TOWN OF MOUNT PLEASANT, SOUTH CAROLINA
BOARD OF ZONING APPEALS
January 25, 2021
MINUTES**

Attachment 1—Staff Report

Present: Barry Wolff, Chair, Julian Hopkins, Beth Santilli, Elliott Barrow,
Stephen Wood, Stephen Duke.
Absent: Megan Stevens.
Staff: Michael Robertson, David Pagliarini, Mac Deford, Lynnette Lynes

Mr. Wolff called the meeting to order at 6:02 pm.

A. Approval of Agenda

✓ *Mr. Wood moved for approval of the agenda. Mr. Duke seconded the motion. All in favor.*

B. Approval of Minutes

✓ *Mr. Woof moved for approval of the minutes. Mr. Duke seconded the motion. All in favor.*

C. Explanation of Procedures

Mr. Wolff reviewed the procedures with the public.

D. Public Comment

There being no comments, Mr. Wolff continued with the agenda.

E. General Correspondence

- 1. Request for one-year extension of Case V-41-05 in accordance with §156.049**

✓ *Mr. Duke moved for approval of the request. Mr. Hopkins seconded the motion. All in favor.*

F. Administration of Oath

Mr. Wolff administered the oath to those speaking.

G. Business

1. Case V-36-2020, 1506 Checker Court, TMS# 583-03-00-366, Request for relief from the strict application of PD to allow a 5-foot side yard encroachment. The PD Ordinance requires a 10-foot side yard. Correspondence

This item was withdrawn.

2. Case V-38-2020, 262 Commonwealth, TMS# 596-08-00-260, Request for relief from the strict application of §156.111 to allow a 1,225 sq. ft. footprint accessory structure, 26-feet, 3 ½ inches in height. The ordinance allows a maximum 750 sq. ft. footprint for an accessory structure, 18-feet in height.

✓ Mr. Jason Dobson, owner, reviewed the request with the Board.

✓ Ms. Jody Kennedy 3574 Holgrem St, expressed concern with drainage. She stated that there have been drainage issues with this lot since the house was constructed. She expressed concern with the additions to the home, the additional structure and the location of the additional structure. She stated that she is not opposed to having a structure to house the additional vehicles and equipment but is opposed to the additional structure being used for commercial use and storage. She suggested that the location of the additional structure is too close to the property line and would affect their property. She expressed concern with the property values being affected. She expressed concern with uses such as fires in the backyard that could be hazardous to the surrounding property. She suggested that there should be additions to the main structure.

✓ Mr. Chad Bryant, 3536 Holgrem St, stated that he lives directly across from the proposed property. He is in favor of having the vehicles stored in a building but is not in favor of the size of the proposed structure. He stated that he has not had any difficulty with the owner.

There being no further comments, Mr. Wolff closed public comment.

✓ Mr. Robertson reviewed staff comments with the Board.

➤ *Mr. Wood moved for denial based on the findings that the applicant has failed to show that being within the 750 square foot limit would unreasonably restrict the use of property. Mr. Duke seconded the motion. Motion passed on a 4 to 2 vote with Mr. Barrow, Mr. Hopkins, Mr. Duke, and Mr. Wood in favor; Mr. Wolff and Ms. Santilli opposed.*

3. Case A-1-2021, 32 Montrose, TMS# 517-06-00-732. Appeal of the Zoning Administrator's determination that the property is an "All Yard Building" in accordance with the provisions of the I'On Code Planned Development Ordinance. Applicant contends that the lot should be designated a "Rear Yard Building" based on previous site plan approvals and correspondence with the Planning Department. Record of Zoning Administrator

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Mr. Cordes Ford, attorney, reviewed the request with the Board.

➤ There being no comments, Mr. Wolff closed the public comments.

➤ *Mr. Wood moved to uphold the Zoning Administrator's determination. Mr. Wood seconded the motion. Motion passed on a 5 to 1 vote with Mr. Wolff, Ms. Santilli, Mr. Hopkins, Mr. Duke, and Mr. Wood in favor; Mr. Barrow opposed.*

4. Case V-3-2021, 32 Montrose, TMS# 517-06-00-732, Request for relief from the strict application of the I'On Code to allow development of the lot as a Rear Yard Building or 47% building coverage for an All Yard Building type. The I'On Code Planned Development ordinance limits All Yard Building types to 40% building coverage. The applicant contends previous development plans applied Rear Yard Building standards to the lot.

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Mr. Cordes Ford, attorney, reviewed the request with the Board.

➤ Ms. Laura Winterfield, owner, stated that they moved forward with their plans based on the letter from Ms. Kate Miller. She suggested that they have done their due diligence and asked that the request be approved.

- There being no further comments, Mr. Wolff closed public comments.
- *Mr. Wolff moved for reconsideration of the previous motion for appeal A-1-2021. Motion failed due to the lack of a second.*
- *Mr. Wood moved for denial of the variance based on findings that the criteria for a hardship has not been met. Mr. Hopkins seconded the motion. All in favor.*
- 5. **Case V-1-2021, 1896 N. James Gregarie Rd., TMS# 549-12-00-163, Request for relief from the strict application of §156.106 to allow an approximately 500 square foot impervious surface for an accessory use encroachment into the 30-foot DHEC-OCRM critical line impervious area setback.**
- Mr. Robertson reviewed staff comments with the Board.
- Mr. Simmons Young, architect, reviewed the request with the Board.
- There being no comments, Mr. Wolff closed public comments.
- *Mr. Hopkins moved for denial of the request based on the findings that it does not meet the hardship criteria based on the information included on the application and that it would not enhance property values. Mr. Barrow seconded the motion. All in favor.*

The Board convened for a short break at 7:41 pm and reconvened at 7:49 pm.

- 6. **Case A-2-2021, 520 Whilden Street, TMS# 532-01-00-271, Appeal of the Zoning Official's determination establishing the west boundary as the front yard. Applicant contends that the determination improperly alters the setbacks and fails to provide the greatest amount of buildable area as required by the Zoning Code and prevents an addition to residence. The applicant contends that the correct interpretation of the particular Zoning Code section is to determine that the East boundary is the "front". Record of Zoning Official**
- Mr. Robertson reviewed staff comments with the Board.
- Mr. Thomas Rhode, attorney, reviewed the request with the Board.

➤ There being no comments, Mr. Wolff closed public comment.

➤ *Mr. Wood moved to uphold the Zoning Administrator's determination and denial the appeal. Mr. Duke seconded the motion. Motion passed on a 5 to 1 vote with Mr. Wolff, Ms. Santilli, Mr. Hopkins, Mr. Duke and Mr. Wood in favor; Mr. Barrow opposed.*

7. Case A-3-2021, 3 William Street, TMS# 532-13-00-133, Appeal of the Zoning Official's determination that items that have been withdrawn may not be refiled for six months in accordance with the Board of Zoning Appeals Rules of Procedures adopted on January 27, 2020. Applicant requests a hearing within the six-month timeframe. Record of Zoning Official

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Mr. James Flatley, owner, reviewed the request with the Board.

➤ There being no comments , Mr. Wolff closed public comment.

➤ *Mr. Wood moved to uphold the Zoning Administrator's determination and deny the request based on the findings that the agent was secured by the owner. Mr. Hopkins seconded the motion. All in favor.*

8. Case V-2-2021, 153 Ponsbury Rd., TMS# 535-06-00-154, Appeal of the strict application of the I'On Code Planned Development to allow lot classification as a Rear Yard Lot with 60% lot coverage and 3-foot side yard setback. Applicant wishes to combine two lots to create a single lot which changes the lot classification to All Yard Lot type which allows 40% lot coverage and requires a 5-foot side yard setback. Additionally, the applicant requests relief from the strict application of § 156.142 (C)(2) to allow repairs and improvements greater than 50% while maintaining 3-foot side yard setback. The ordinance requires nonconforming structures and uses improved by more than 50% to be brought into conformance with all applicable sections of the zoning code. Correspondence

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Ms. Julie O'Connor, architect, reviewed the request with the Board.

➤ Mr. Rusty Bennett, owner, suggested that the property is unique because of the number of historic trees on the properties. He stated that they intend to keep the existing foundation and if required to remove the foundation, it would be a significant cost and would harm the historic trees. He suggested that the request would enhance the neighborhood as it would not be adding density to the neighborhood with additional dwelling units on the property.

➤ There being no further comments, Mr. Wolff closed public comments.

➤ *Mr. Wood moved for approval of the request based on the evidence included in the staff report with the condition that the protected and historic trees on both lots be preserved and prohibit the right to seek a variance to remove any historic or protected trees. Mr. Duke seconded the motion. All in favor.*

9. Case V-4-2021, 1458 Fiddlers Marsh, TMS# 532-16-00-003, Request for relief from the strict application of §156.226 seeking to forego 9.5 inches in additional tree mitigation as required under Tree Protection Ordinance. The ordinance required 17.5 inches (50%) mitigation for the removal of a 19-inch live oak and 16-inch live oak.

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Mr. Scott Levy, owner, reviewed the request with the Board.

➤ There being no further comments, Mr. Wolff closed public comment.

➤ *Mr. Hopkins moved for approval of the request in foregoing future or pending tree mitigation based on the findings that the applicant has gone above and beyond giving extra space for Mount Pleasant Waterworks and their right-of-way and has already planted several trees. Mr. Duke seconded the motion.*

➤ *Mr. Hopkins moved to amend his motion to include relief from the 9.5 inches of remaining mitigation. Mr. Duke seconded the motion. All in favor with Mr. Barrow abstaining.*

Mr. Wolff called for a vote on the amended motion. Motion failed on a 3 to 3 vote with Mr. Wolff, Mr. Hopkins, and Mr. Duke in favor; Ms. Santilli, Mr. Barrow, and Mr. Wood opposed.

✓ *Ms. Santilli moved for approval of a 50% reduction of the required remaining 9.5 inches of mitigation for the 19 inch and 16 inch live oak trees. Mr. Wood seconded the motion. All in favor.*

H. Approval of Final Orders

The Board approved final orders.

I. Re-adoption of Rules of Procedure

✓ *Mr. Wood moved for approval. Mr. Duke seconded the motion. All in favor.*

J. Election of Officers

✓ The Board approved Mr. Wolff as chair, and Mr. Wood as vice-chair by secret ballot.

K. Executive Session, Case S-2-2020, Bowman Road & Hospital Drive, TMS# 559-00-00-070, Request for Special Exception in accordance with the provisions of Section 156.326 (C) Use Conditions (5) Commercial Uses (g) Gas Station as allowed in 156.318 (D)(5)(d)

✓ *Mr. Wood moved to convene into executive session for legal advice. Mr. Duke seconded the motion. All in favor.*

The Board convened into executive session at 9:33 pm and reconvened at 9:51 pm. No motions were made while in executive session.

There being no further business, the meeting adjourned at 9:52 pm.

Submitted by,
L. Lynes
BOZA01252021

EXHIBIT A

(West End “Front” of Appellant’s Property)



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN RE: 520 WHILDEN ST.
IN WHICH,

THE WOLFE MARIE VERNON TRUST IS,

Appellant,

vs.

THE TOWN OF MOUNT PLEASANT AND
THE MOUNT PLEASANT BOARD OF
ZONING APPEALS IS,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A No.: 2021-CP-10-00785

**REPLY TO RESPONDENT’S MEMO
IN OPPOSITION**

COMES NOW, the Appellant in reply to Respondent’s Memorandum in Opposition.

REPLY TO FACTS

As recognized by Respondent, the “Lot,” which is located at 520 Whilden Street¹ does not abut any public street. It is accessible from Whilden Street *via* a private shared access easement. The Lot is bounded on all sides by other homes. Respondent labels the West side of the Lot as the “street facing side” (Memo p. 6); *see also* (Memo p. 8) (implying it is the “true/actual street facing side”). This is misleading. There are four houses—each on a different lot—between the West boundary and Whilden St. *See* (Exhibit 1) (Chas. Co. GIS Map). The West boundary faces the neighbor, not the street. Further, any suggestion that the West boundary is nearest the street is also incorrect because the Lot’s North and South boundaries are much closer to public streets—separated by only one house from Venning Street to the North, and Morrison Street to the South *See* (Id.).

¹ TMS No. 532-01-00-271

ARGUMENT IN REPLY

1. Respondent's claim that Section 156.007 is irrelevant commands reversal of the BZA's Order.

The BZA determined this issue is controlled by Section 156.007 of the Zoning Ordinance and Appellant has appealed arguing the BZA's ruling is inconsistent with the requirements of this Ordinance.² However, now Respondent confoundingly asserts this Ordinance is "completely irrelevant" to the determination of whether the East boundary is the rear or front (Memo p. 2). Instead, Respondent asserts this provision speaks only to identification of the "sides" or "longest dimension" and once that determination is made this provision of the Ordinance has no import whatsoever, and therefore the Town is free to determine the front and rear upon the whims of its fancy. This is absurd.

Respondent (and the BZA) fundamentally ignored that Section 156.007 describes the creation of the "Building Line," which is established by way of applying the applicable set-back from each of the lot lines (i.e., sides, front, and rear) around the circumference of the parcel. By creating the area or "box" in which the "building or structure must be placed" the Building Line serves as the boundary which the building cannot exceed. Because the front and rear setbacks are not the same, it matters which lot line is the front and which is the rear. Without identifying the

² The Ordinance reads:

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.**

(emphasis added).

front and rear yards, the Building Line cannot be established. Thus, this Ordinance speaks directly to the determination of the front and rear yards. This is precisely why the Ordinance contains the second clause mandating these yards must be determined “both regardless of lot and building orientation so as to provide the greatest amount of buildable area”—to provide further direction on how to make this determination.

Respondent would have this Ordinance interpreted such that once the sides (*i.e.*, longer dimension) are determined, the Town is free to decide which of the remaining boundaries is the front and which is the rear based on which it calls “the Town’s process, legislative intent, and practical realities” (Memo p. 6). While Respondent fails to identify what “process, legislative intent, and practical realities” it is referencing, the fact remains this is simply not what the plain language of the Ordinance says.³ Instead, it specifically commands the determination be made to maximize buildable area. *Id.*

Moreover, Respondent’s suggestion that Section 156.007 does not contemplate application to the determination of front vs. rear is inconsistent with the plain language of the statute. First, this section of the Ordinances plainly refers to “front and rear yards.” *See* Zoning Ord. § 156.007 (“Front and rear yards should be located along the width of the lot (shorter dimension)”). Secondly, Respondent’s interpretation would render the second clause—*i.e.*, “both regardless of lot and building orientation so as to provide the greatest amount of buildable area”—to be superfluous. The identification of the “sides” by the longer dimension is a purely objective evaluation and there

³ If, as Respondent contends, this was the intent of the Town Council when it passed the Ordinance, it must be presumed that it would have adopted language to clearly effectuate this. However, it did not. Thus, the rules of statutory interpretation do not support Respondent’s assertion. *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”); *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].”).

is no need to distinguish one side from another because in every zoning district each “side” is subject to the same setback as the other side. *See* Zoning Ord. § 156.303 (establishing all side yard setback requirements for the various districts). This second clause can only have meaning in the context of distinguishing one short dimension side from another short dimension side—*i.e.*, front vs. rear—because this is the only distinction that matters. In sum, if Respondent’s interpretation of the statute were what was intended, the second clause would not be there. The fact that the clause exists means it was intended to serve a purpose, and it can only serve a purpose when distinguishing the front from the rear. *See 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.”). Whichever designation maximizes buildable area determines the designation of front vs. rear.

2. **Respondent’s assertion regarding the “purpose” of the Special Overlay District is inconsistent with the purpose plainly stated in the Ordinance.**

Respondent dismisses Appellant’s assertion that the purpose of the Special Overlay District favors addition and renovations of homes. Instead, Respondent claims the purpose is to “enhance the streetscape” (Memo p. 6). That Respondent’s assertion is wrong is plain from the very first words of the statute creating the Special Overlay District which states: “**The purpose of the district is to allow for continued construction, addition to and renovation of homes located [there].**” *See* Zoning Ord. § 156.315(A)⁴ (emphasis added).

3. **Respondent’s suggestion that Appellant should seek a variance is misplaced.**

Respondent claims that because the Court’s interpretation of the statute would apply town-wide that Appellant should instead request a variance—rather than asking to have the law applied

⁴ Appellant inadvertently cited this section as 156.310 rather than 156.315 in its initial memo.

as written. *See generally* (Memo p. 8). However, this makes no sense. The law is the law. The courts must apply it uniformly even when the Town does not. The notion that Appellant is only entitled to the protection of the law by seeking special dispensation is a non-sequitur. Respondent's position is fatally circular. A variance can only be sought if the ordinance, as written, commands the East side is the rear. Yet this is the very issue in dispute and the very point on which Respondent is wrong.

Respondent complains that to apply the statute as Appellant suggests (and as it is written) would "end the Town's ability to designate the 'front' vs. the 'rear' based on which side faces the street and/or the primary façade of the home" (Memo p. 8). To be certain, the Town's ability to make the determination this way ended when the Town Council enacted an Ordinance that required that decision be made "regardless of lot and building orientation so as to provide the greatest amount of buildable area." *See* Zoning Ord. § 156.007. What Respondent is truly seeking is for this Court to engage in judicial legislation. To disregard the plain language of the law because Respondent does not like the result. This should not stand. *See e.g., Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964) ("There is a marked distinction between liberal construction of statutes . . . and the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced. The former is a legitimate . . . while the latter is judicial legislation, forbidden by" the law.).

Respondent summarily asserts that to rule for Appellant would "[u]nquestionably [] lead to the diminishment of the beauty of the Town" because it would allow homeowners to orient their homes so as to maximize buildable area. Notwithstanding the utter lack of support for this claim, Respondent overlooks that the issues implicated here are limited to the Special R-2 Overlay District in which predominantly all the effected homes have already been built. Moreover, its claim

rests on the contention that the “front” must be the boundary facing the street when, to the contrary, the BZA’s own Order stated that orientation to the street is immaterial, and that under the Ordinance even where a parcel’s the longer dimension borders the street it would still be considered the “side.” *See* (BZA Order p. 3). Ultimately, if Respondent desires an Ordinance that does not favor maximizing buildable area, then it should submit its arguments to the Town Council, which unlike this Court, can amend the Ordinance. Until then, the Ordinance plainly commands the determination be made “so as to maximize buildable area” and this Court should apply the Ordinance accordingly rather than re-writing it. Zoning Ord. § 156.007.

CONCLUSION

For the reasons stated above, together with those previously stated, this Court should reverse.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

s/TJ Rode

THOMAS J. RODE

MICHAEL A. TIMBES

15 Middle Atlantic Wharf

Charleston, South Carolina 29401

Phone: 843-937-8000

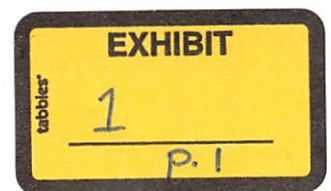
Fax: 843-937-4200

thomas@tktlawyers.com

michale@tktlawyers.com

Attorneys for Appellant

November 4, 2021
Charleston, South Carolina



520 WHILDEN ST, MOUNT PLE X



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
2021-CP-10-00785

Wolfe Marie Vernon Trust,)

Appellant

) TRANSCRIPT OF RECORD

-vs-

)

) December 16, 2021

The Town of Mount Pleasant,)

Respondent

)

) Charleston, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Jr., Judge

A P P E A R A N C E S:

Thomas J. Rode, Esquire
Attorney for the Appellant

Brian L. Quisenberry, Esquire
Attorney for the Respondent

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

1 THE COURT: So tell me about the house.
2 There's a setback on the property. East is east
3 and west is west ---

4 MR. QUISENBERRY: That's right. That's
5 right. It's all about orientation. I represent
6 the township of Mount Pleasant, Your Honor.

7 THE COURT: Okay.

8 MR. QUISENBERRY: So, I'm the Respondent,
9 but the Appellant is over here, and I'm sure he will
10 go first.

11 THE COURT: Okay.

12 MR. RODE: That's the way I understand
13 it to normally go, Your Honor. May I approach?

14 THE COURT: Yeah.

15 MR. RODE: I've got a few items here too
16 to help us follow along.

17 THE COURT: Okay. So, I couldn't tell --
18 I think I briefly read a little bit of the facts.
19 Basically, the zoning board decided that the front
20 is the back or the back is the front, and it's a 25-foot
21 setback that your client -- it won't work that way,
22 and you want to change it some other way; is that right?

23 MR. QUISENBERRY: It's his client.
24 I represent the town.

25 THE COURT: Oh, that's right. His client

1 wants it.

2 MR. RODE: Yes, Your Honor. I represent
3 the homeowners who are petitioners.

4 THE COURT: Right. So they want to change
5 the orientation and decide what's the front and what's
6 the back?

7 MR. RODE: I think that's one way of looking
8 at it. What they were looking to do is they have
9 developed plans to modify the house, which is in Mount
10 Pleasant. What this appeal was about is about an
11 interpretation of the town's ordinance as to which
12 side, the two sides at issue being the west and the east
13 side, which side of the property is subject to the front
14 setback, and which side is subject to the back setback.
15 And the distinction matters, and there's some sort
16 of unique circumstances here that apply.

17 And so starting with that, to sort of orient
18 Your Honor -- I don't know how familiar you are with
19 sort of the older area of Mount pleasant. That's where
20 this house is.

21 THE COURT: Okay.

22 MR. RODE: In Tab 1 of the notebook that
23 I handed up to you ---

24 THE COURT: Okay.

25 MR. RODE: --- this -- this is an aerial,

1 the GIS aerial, of the lot, okay? And so this lot
2 is completely landlocked, surrounded on all sides
3 by other lots.

4 THE COURT: Okay.

5 MR. RODE: It borders no streets. That
6 black arrow that you see there coming up from Whilden
7 Street is like an alleyway, like a shared driveway.
8 There are five -- four or five houses, and I think
9 four, that you sort of drive past, and I don't know
10 if you would call it behind, beside. But that alleyway
11 goes and terminates at my client's lot, which is the
12 one there circled in blue.

13 THE COURT: Okay.

14 MR. RODE: So surrounded on all sides
15 by other parcels. And I appreciate sort of the back
16 is the front, the front is the back argument that
17 I anticipate the city is going to make. But what we've
18 got here is we have an ordinance, a statute that has
19 been passed by the town of Mount Pleasant that speaks
20 directly to how to identify and how to determine which
21 setbacks apply to which boundary lines.

22 Our contention is the language of that
23 statute is plain. It's plainly objective and that
24 the town is trying to concert some subjectivity into
25 that, ignoring the objective requirements.

1 So to start with that, if you turn to
2 the second tab there, this is the -- and you may have
3 recognized this from the briefs that have been
4 submitted. This is the house, okay? This is not as
5 built; this is sort of the designed plans, the proposed
6 plans. The east side is the side that is in question,
7 all right.

8 THE COURT: Okay.

9 MR. RODE: Or the side that is the issue.
10 The -- and the reason that is, is this house, this lot,
11 is in what's called the special reserve overlay
12 district. I can't remember exactly what it's called,
13 the SR-2 overlay district. Unlike most of the districts
14 in Mount Pleasant, it has different requirements for
15 front and backyard setbacks. The front yard setback
16 is 15 feet; the backyard setback is 25 feet.

17 So specific to this overlay district
18 and others, likely, it matters which one is the front
19 and which one is the back because they're not assigned
20 the same setback, right? If you were in another zoning
21 district where it's 25 on both sides, it's not an issue.
22 Here, we've got a difference in the setback
23 requirements, which then leads us to a controlling
24 ordinance.

25 So when we requested from the town for

1 a determination that the east side was, in fact, the
2 back, based upon the statute, right, and that statute
3 there is listed in the order, which is the little blue
4 tab at the bottom of that notebook.

5 THE COURT: Okay.

6 MR. RODE: And the relevant section of
7 the statute is right there, and it defines the building
8 line, including setbacks. It's the line that represents
9 the minimum distance, when measured at right angles,
10 that the building must be placed, the front and rear
11 yards should be located along the width, or the shorter
12 dimension, and the side yard is located along the longer
13 dimension. No objection at the north and south, each
14 subject to a ten-foot setback, right?

15 THE COURT: Okay.

16 MR. RODE: No distinction between the two.
17 But then it goes on and says, "Both regardless of lot
18 and building orientation so as to provide the greatest
19 amount of buildable area."

20 That's essentially where we are hung up here
21 because when you turn the page what you see is that
22 the Board of Zoning Appeals in their order determined
23 the front and the back, based upon the orientation
24 of the building and the orientation of the lot
25 to the street. And they have offered their -- sort

1 of their explanation, I suppose, as to why they don't
2 need to comply with that second -- that last clause
3 of the ordinance.

4 When I look at this, Your Honor, we have
5 this building line description, which, to me, envisions
6 sort of a box within a box. You've got your lot,
7 and then from each line you draw your building line,
8 which encompasses the setback. And I sort of drew
9 a visual representation of what I'm thinking about,
10 got my mind on Tab 4, but it's just a very simple box
11 within a box.

12 THE COURT: Right.

13 MR. RODE: Now, ordinarily, if we have
14 a perfectly symmetrical lot, and we have equal setbacks
15 front and back, it doesn't -- this is a non-issue.
16 But we submit that that clause at the end of the statute
17 is there precisely to recognize the fact that lots
18 are not perfectly symmetrical, and that in some zoning
19 districts there is a difference between front and back.
20 And, here, that difference comes into play for a couple
21 of reasons.

22 The first is the town can't make this
23 determination subjectively, based upon the orientation
24 of the building, right? And I submit you've probably
25 seen some photos. If you were to look at this house

1 in your traditional mindset, the east side would look
2 like the back, and the west side would look like the
3 front, right? I'm not here to argue about architect.
4 What I'm here to argue about is this statute which says
5 regardless of building orientation. That's part one.

6 Part two is, so as to maximize buildable
7 area. This lot, the east side, is longer; the west side
8 is shorter. Simple geometry will tell us that when you
9 apply the larger setback to the longer side, the area
10 within the setbacks, right, or the area you can't build,
11 is larger, which then means the buildable area is
12 smaller, right?

13 So when you have that circumstance, applying
14 the larger setback to the longer property line creates
15 less buildable area, directly contradicting the very,
16 very plain language of this statute.

17 Your Honor, the statute is objective.
18 I mean, it literally is objective. Regardless
19 of building orientation, regardless of lot size.
20 The town is trying to insert subjectivity into the
21 statute, and I submit that they can't do that. There's
22 a -- we can't ignore that plain language of the statute.
23 It is there for a reason. It must be given some reason.
24 And I think the law is pretty clear on how to interpret
25 what's in the statute.

1 And I think that that objective requirement
2 is perfectly consistent, Your Honor, with the purpose
3 for which this special overlay district was created.
4 That purpose is specifically stated by the town council
5 in the ordinance, and that's at the little bottom yellow
6 tab. I included a copy of that statute.

7 And it says right at the beginning,
8 "The purpose of the district is to allow for continued
9 construction, addition to, and renovation of homes
10 located in the older district in the built-out
11 neighborhoods between Coleman Boulevard and the
12 Historic District, creating special overlay district
13 classification with flexible yard requirements,
14 and this will lead to an enhanced streetscape
15 and a pedestrian-friendly environment." That is the
16 stated purpose.

17 So to just sort of sum it up, Your Honor,
18 this is plainly the ordinance. Now, I'm not going
19 to pretend to argue what the house looks like; that's
20 not why I'm here. But that was, in essence, the basis
21 for the town's rule. And I submit that if the zoning
22 board would like the ordinances to read differently,
23 they can go talk to the town council. But right now,
24 the plain language of that statute contains those purely
25 objective requirements that it be without regard to

1 building orientation, without regard to lot orientation,
2 and to maximize buildable area. Their order in this
3 case fails on all three.

4 THE COURT: Okay.

5 MR. RODE: So that's it. I'm happy to
6 answer any other questions.

7 MR. QUISENBERRY: Your Honor, Brian
8 Quisenberry, attorney for the town of Mount Pleasant.
9 I'll try to be quick because I think this is fairly
10 simple. But my view, this is an appeal because
11 the house sits too close to the rear property line.
12 They want to do an addition that's bigger and push
13 it out over the property line, the setback line
14 in the rear, so they want to call the back front.

15 So the town rejected that; the Board
16 of Zoning Appeals rejected that and you should too,
17 so you should deny the appeal. Now there's no
18 allegation that this has been applied differently
19 to them than anyone else. It's been applied the same
20 way for years.

21 So really what they should be doing,
22 Your Honor, is getting a variance. They should ask for
23 a variance. The town suggested that would be a proper
24 approach here because it's a claim that their property
25 is somehow unique, tucked away, shaped weirdly. Seek

1 a variance. That's what a variance is for, but they
2 didn't do that. They're asking you to say that the
3 town's application throughout the years to the whole
4 town is incorrect, and that would have town-wide
5 ramifications, if you ruled with them today, Your Honor.

6 Now real quickly I want to go through the
7 town's determination, which I think is fairly simple.
8 At Tab A in my notebook, Your Honor -- you have my
9 notebook out there, Tab A.

10 THE COURT: Okay.

11 MR. QUISENBERRY: That is a photo of
12 the property we're talking about, the Tab A, and you'll
13 see there that this is the west side, which the town
14 determined was the front, is where the photo was taken,
15 and you see the front porch there, and you see the front
16 door, the primary entrance to the main building on the
17 property. And you see over to the left, the access
18 easement roadway that approaches from the west on this
19 side of the property that leads to the public street
20 right there.

21 So they determined, based on the access
22 roadway and the front porch, that this was the front
23 of the property. So -- and that is a factual
24 determination, of course, and that can only be
25 overturned by a clear error on this appeal.

1 Now on the code argument, which is a matter
2 of law that I think is easily rejected, the entire
3 argument is about this definition provision, and the
4 second sentence of the provision, building line.
5 So that says, and he read it to you, but I think I would
6 like to read it to you again, Your Honor, just to
7 emphasize something. I think it's fairly simple,
8 but just to clarify and make sure. It says, front --
9 and this is the second sentence, which the town
10 focuses on, front and rear yards. Those are together.
11 "Front and rear yards should be located along the width
12 of the lot, shorter dimension."

13 Then it says, side yards, referenced
14 together, "Should be located along the length of
15 the lot, longer dimension." And then it talks about
16 the requirements for making that determination,
17 "Both regardless of lot or building orientation."
18 Then it says why, "So as to provide the greatest amount
19 of buildable area."

20 So -- and I've got this -- I'm a visual
21 learner, Your Honor, so I've got a little handout here.
22 It helps me. I think it's fairly simple, but just
23 in case you're like me and visuals help, so this is
24 a map that was attached to the appeal by the Appellant,
25 Your Honor. It was Exhibit 2 to their appeal, and the

1 highlighted dot is actually their house. But the two
2 lots that I've color coded in red and blue there I think
3 are good examples to show the purpose of this provision,
4 this second sentence of this definition provision.

5 So you see two lots there, both similar size, that are
6 oriented in different ways; one is long wise, and one
7 is up and down.

8 And so this provision says you take the
9 front and rear yards, should be the short dimension,
10 which are in red here, and the side yards should
11 be the long dimension, which are blue. And you make
12 that determination here, regardless of how these lots
13 are oriented, and that's all this is saying.

14 It has nothing to do with determining
15 the front versus the back. This is just about deciding
16 which is the sides, the blue. How do you determine
17 what's the blue? You don't look at the orientation
18 of the lot; you look at the length and the short
19 side and the long side. That's all it's about.
20 This provision doesn't say anything about determining
21 the front versus the back.

22 Now that makes sense, Your Honor, and here's
23 why. Front versus back is naturally an orientation
24 decision. Front and back is about orientation; it's an
25 orientation matter. So clearly the town wouldn't say

1 you can't consider orientation when determining
2 the front versus the back. That's a question of
3 orientation. So it's really just a misreading here by
4 the Appellant of the provision and what the purpose is.

5 Now the town stated in the order the way
6 the town determines front versus the back is based on
7 where the access is to the property and where the main
8 entrance to the primary building is on the property.
9 That's common sense. There's -- the code is silent on
10 how to determine the front versus the back, so the town
11 uses simple common sense, Your Honor, and you can't beat
12 common sense.

13 Now the Appellant's reading here, they would
14 have the town -- say that the town has been doing this
15 wrong all these years, the town has got to ignore the
16 main access point and call the back front just because
17 of the square footage makes no sense at all. And it
18 would defeat the purpose of a setback which, Your Honor,
19 is to make the streetscape look nice. You have
20 a consistency, you want the same setback in the
21 neighborhood.

22 If we read it their way and we went by,
23 you know, the size of how much you can build, it would
24 be different for each lot, and you would have jagged
25 tooth streetscape. That clearly isn't the purpose.

1 So circling back to what I started with,
2 they should seek a variance here. If that's -- if they
3 think their lot is shaped weird or there's some kind
4 of hardship, they can do that. They're not timed out.
5 They could go get a variance. They can apply for it
6 tomorrow, and that's what they should do, but Your Honor
7 should deny this appeal.

8 THE COURT: Okay. So in this particular
9 lot, and I understand the orientation determines, you
10 know, the side yard dimensions. But this particular lot
11 because of the shape, you think the side yard provisions
12 were, in fact, shorter than the front and back?

13 MR. QUISENBERRY: You're talking to me,
14 Your Honor?

15 THE COURT: Yes.

16 MR. QUISENBERRY: There's no dispute that
17 the long -- there's no dispute over what's the sides.
18 It's the north and south.

19 THE COURT: I understand. But when you look
20 at the dimensions, the north and south ---

21 MR. QUISENBERRY: They have longer
22 dimensions, Your Honor.

23 THE COURT: On the north, there's 154 --
24 137, okay?

25 MR. QUISENBERRY: If you want to turn to

1 Page 3, Your Honor, there's another diagram that might
2 help. Page 3 is my brief in the notebook. Page 3.

3 THE COURT: Okay.

4 MR. QUISENBERRY: It shows how the building
5 is oriented on the lot. And you see the north
6 side there in the diagram, which is the longest side,
7 the longest building line, and that is on the north,
8 and those are determined to be the sides. The west
9 and the east are determined to be the front and back.

10 THE COURT: Okay.

11 MR. QUISENBERRY: So that's what that
12 provision says.

13 THE COURT: And they're the longest sides,
14 if you add up all the numbers?

15 MR. QUISENBERRY: Yeah, the north and south.

16 THE COURT: Okay. The town made the same
17 determination that my mother would have made and looked
18 at the front of the house. Now that's the front door,
19 and that's the back door.

20 MR. QUISENBERRY: Yes, sir.

21 THE COURT: But your case -- you're not
22 determining -- looking at the house determines what
23 the front door or the back is. You think by the
24 interpretation of the statute, the front and the back
25 door is as obvious as ---

1 MR. RODE: I think that's precisely
2 the point, Your Honor. And I think that's precisely
3 why this language is in the statute. There was a lot
4 of discussion about -- talking about the front of the
5 house and the back of the house and how front and back
6 is a matter of orientation and how in this diagram we're
7 looking at how these lots are oriented.

8 The statute specifically says regardless,
9 regardless of that. So you've got to go -- this is
10 a purely objective evaluation, purely objective, right?
11 And so, you know, just to touch on a couple of these
12 things, the notion that we need to request a variance,
13 I believe is a little bit disingenuous because the
14 notion that we need to request a variance assumes that
15 this very sentence is not in the statute. The statute
16 already contemplates the notion for how you maximize
17 the buildable area because the town has said so.

18 Second thing, the idea that somehow
19 identifying front and back, that this enhances the
20 streetscape, there is no streetscape. There is no
21 streetscape. This is a landlocked lot, and I don't
22 know, and there's been nothing presented on how the
23 Court had -- how the board has applied this over the
24 years, but that's not what we're here to talk about.

25 What we're here to talk about is, today

1 they applied this statute in a way that simply ignored
2 half of it. Period. And I don't know how else to put
3 it more simply. Their application decreases buildable
4 area. Their application is based upon, as you heard,
5 the access point from the road, orientation of the lot,
6 and access point to the house, orientation of the
7 building on the lot, all three things which are
8 specifically excluded from the determination in the
9 statute. So, I think I would just leave it ---

10 THE COURT: Okay. And I understand your
11 argument, but is the statute anticipating a vacant
12 lot when you start building? So based on this statute,
13 they could have turned the house completely the other
14 way around and built it, but the front goes in the back
15 and the back is the front. But once they choose which
16 way to orient the house, you don't think they're stuck
17 with that as the front and back?

18 MR. RODE: Well, Your Honor, for that,
19 I would point Your Honor to the purpose of the statute.
20 The purpose of the statute and the purpose of creating
21 this special overlay district is because these
22 neighborhoods were built out before the zoning
23 ordinances were put in place.

24 So that determination when they built the
25 house is necessarily germane to a determination under

1 these ordinances, the purpose being to allow the
2 continued construction, addition to, and renovations
3 of homes located in these older built-out neighborhoods
4 between Coleman and the Historic.

5 So it is specifically creating that avenue
6 to say, look, these are old neighborhoods that were
7 built without this in mind. When we apply those
8 variance setbacks we have to, as the statute says,
9 have flexible yard requirements, and they have codified
10 what those flexible yard requirements are.

11 THE COURT: So let me ask -- let's say
12 that you're right and I rule in your favor, and they
13 can build this deck across the setback because the back
14 setback is 25 feet. They want to get into that 25 feet
15 for this deck or porch. Once they do that, does that
16 automatically put the 25 foot on the front of the house?
17 That way they can't go that way. You've got to -- one
18 side has 15 and one side has 25.

19 MR. RODE: That's exactly correct.

20 THE COURT: So if you change it, then
21 they're going to be limited in the way they can go that
22 way, right?

23 MR. RODE: That's 100 percent correct,
24 Your Honor.

25 THE COURT: So that's the ---

1 MR. QUISENBERRY: Your Honor ---

2 MR. RODE: Buildable area ---

3 MR. QUISENBERRY: Doesn't apply to front
4 and back. It doesn't say that. I mean, the Appellant
5 is rewording the provision. It's about determining
6 the sides versus the front. You have four dimensions on
7 the lot, and you have to decide which ones are the sides
8 out of four, and that's what that provision is about.

9 THE COURT: All right.

10 MR. QUISENBERRY: It's not about the front
11 versus the back. That makes no sense. It's an
12 orientation determination. To say the town wouldn't
13 pass that ordinance, that's not a logical way to read
14 that provision.

15 MR. RODE: And to that point, Your Honor,
16 I would simply point out that I would disagree because
17 if that were the case, then the statute would simply
18 say the longer dimension is the side, but it doesn't.
19 And the reason that it doesn't -- and the reason that
20 that second clause is there is because it then makes
21 a difference what's the front and the back when
22 the setback requirements aren't different between
23 one and the other, right?

24 There is -- that clause would have
25 absolutely no purpose in deciding between one side

1 and the other side because the setbacks are identical,
2 right? So applying a ten-foot setback to the left side,
3 then a ten-foot setback to the right side, if you were
4 to swap them, the buildable area is going to remain
5 exactly the same.

6 That's not the case when the front and back
7 -- with the front and back because they have a different
8 setback requirement, which is precisely the reason that
9 that clause has to be there. There would be no reason
10 for that clause to be there if their interpretation
11 of the statute were correct.

12 MR. QUISENBERRY: If I could address that
13 briefly. No one is saying that you have to determine
14 right side versus left side. You've got four sides,
15 four building lines to the property. You have to
16 determine which are the sides versus which are the front
17 and back. You look at my drawing, which are the red
18 lines versus which are the blue lines, and you could
19 see on one it's -- if you apply it based on streetscape,
20 it would smooch the lot.

21 So they say when we're determining the
22 sides versus the front and back, you ignore orientation.
23 But once you make that determination, you use logical
24 sense to determine the front versus the back. It's
25 easy. It's been done that way for years. And then

1 if you ruled against the town here, it would apply town
2 lot, not just to their property.

3 MR. RODE: I don't -- I think the statute
4 says -- if that were the case, it would just say the
5 longest dimension is the side.

6 THE COURT: That's what it says.

7 MR. RODE: It does. But it also says that
8 the shorter dimension is the front ---

9 THE COURT: The front and back ---

10 MR. RODE: And it also says to be determined
11 without regard to lot orientation, building orientation,
12 so as to maximize buildable area. What the statute --
13 what it says.

14 THE COURT: It says without regard to
15 building orientation. So if the house were turned
16 completely sideways, it turned 90 degrees, then it would
17 be facing the side and then the rear would be the other
18 side, based on the statute that the longest one is the
19 sides and the shortest one is the front and back.

20 MR. QUISENBERRY: That's right, Judge.

21 THE COURT: So they don't determine front
22 and back no matter which way the house is sitting.
23 If the house was turned 90 degrees, they still would
24 say the front is the short -- the front and the back
25 are the shorter sides, the sides are the longer sides.

1 That's what he's saying. It doesn't matter where
2 the house is, they look at the lot with no house
3 on it and determine this is the side yard, and this
4 is the front and back.

5 MR. RODE: I agree.

6 THE COURT: Once they make that
7 determination, the second thing is, okay, we've decided
8 that these two ends are the front and back, these two
9 sides -- these longer ones are the sides. Now we've
10 made a determination this is the front and back, these
11 are the sides. Now what is the front of the house?
12 Their position is we look at the house and determine
13 what the front is, and that's where the setbacks
14 are. The front of the house has got 15 foot; the back
15 of the house has got 25.

16 MR. RODE: And to that point, Your Honor,
17 let's go back to what happens when the house is turned
18 90 degrees so that the front is facing the side.
19 That's still a side, and one of the sides is now
20 the side of the house ---

21 MR. QUISENBERRY: And you look at the
22 access, Your Honor, the primary access to the property.

23 MR. RODE: And neither of those
24 determinations affect buildable area.

25 THE COURT: If you turn the house 90

1 degrees, and the house is facing the side, then you
2 build front and back, they can expand the house this
3 way. They just can't expand past the ten-foot side
4 of the property.

5 MR. RODE: And you're assuming that the
6 house came to the zoning ordinances, not the zoning
7 ordinances coming to the house, which is precisely
8 what this special overlay district is about.

9 THE COURT: I understand.

10 MR. QUISENBERRY: Except it isn't in this
11 special overlay district provision. This is
12 a definition. It's in -- along with all the other
13 definitions. It's not a special code or something
14 for this area.

15 THE COURT: Okay. I'll think about it.
16 I'll let y'all know. I understand your argument,
17 and I understand zoning a lot because I was a county
18 attorney for 30 years, and I had a lot of zoning issues.
19 We started zoning in my county, and it was a nightmare
20 for the county attorney because the zoning board would
21 never put anything in the record on how they decided
22 anything, so everything was arbitrary. I said, y'all
23 got to put something in the record. Anyway, thank you.

24 MR. QUISENBERRY: Thank you, Your Honor.

25 MR. RODE: Thank you, Your Honor.

CERTIFICATE OF REPORTER

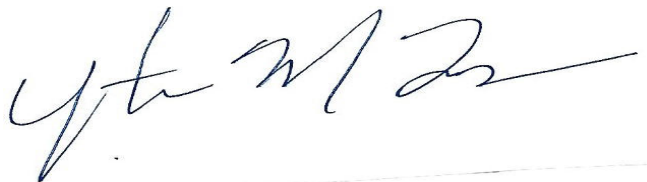
State of South Carolina)

County of Charleston)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 16th of December, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 19, 2022



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

In Re: 520 Whilden St.
in which,

The Wolfe Marie Vernon Trust is,

Petitioner,

and

The Town of Mount Pleasant, and the Mount
Pleasant Board of Zoning Appeals is,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No.: 2021-CP-10-00785

**MOTION TO ALTER OR AMEND
AND/OR FOR CLARIFICATION
(RULE 59(e) SCRPC)**

COMES NOW the Plaintiff, and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and who herein moves the Court to alter or amend its January 10, 2022, Form 4 Order denying Plaintiff's Appeal.

BACKGROUND

This matter came before the Court on appeal from a decision of the Town of Mount Pleasant's Board of Zoning Appeals (BZA) concerning a parcel of real property owned by Petitioner (the "Lot"). The issue before the Court concerned the means by which the Town determined which of the Lot's boundaries would be subject to the "front" setback (15 feet) as opposed to the "back" setback (25 feet). Under Section 156.007 of the Mount Pleasant Code of Ordinances, the BZA decided the West boundary was subject to the "front" setback and the East boundary was subject to the "back" setback.

The BZA's decision was based upon the orientation of the house on the Lot and the orientation of the Lot to the Street. Because the Town's Zoning Ordinances specifically prohibit the determination from being based on "lot and building orientation" the BZA's ruling violated the plain language of the Ordinance. Further the BZA's determination resulted in reducing the

buildable area of the Lot (*i.e.*, increasing the area of the Lot in which building is prohibited by the setback requirements). Because the Ordinance explicitly requires the determination be made “so as to provide the greatest amount of buildable area” the BZA’s decision is violative of the plain language of the Ordinance. Finally, the BZA’s decision is inconsistent and violative of the purpose and intent for which the SR2-OD (the Special Overlay Zoning District in which the Lot is located) was created.

The Petitioner appealed to this Court and raised all of these arguments. In response, the Town (herein “Respondent”) argued, among other things, that notwithstanding the language of the Ordinance, it had the discretion to make the decision in the manner it did, because this is the way it had typically been done. Respondent claimed it needed the authority to make the decision without constraint of the Ordinance so as not to threaten the Town’s beautification efforts. On January 10, 2022, this Court issued a Form 4 Order in which it denied the appeal without explanation.

STANDARD

Rule 59 “motions are applicable when the circuit court sits in an appellate capacity, and they are required to preserve an issue for review by the Court of Appeals or this Court.” *Pikaart v. A & A Taxi, Inc.*, 393 S.C. 312, 324, 713 S.E.2d 267, 274 (2011). The purpose of Rule 59(e), SCRCP, to alter or amend the judgment, “is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” *Elam v. S.C. DOT*, 361 S.C. 9, 21-22, 602 S.E.2d 772, 779 (2004) (quoting *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992)). “[A] party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Elam*, 361 S.C. at 21, 602 S.E.2d at 778-79 (“There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention

to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument.”). When as here, it is unclear whether the trial court ruled on a party’s arguments, a Rule 59 motion should be filed to preserve the arguments for appeal.

THE CONTROLLING ORDINANCE & ARGUMENT

The BZA applied Section 156.007 of the Zoning Ordinance 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.**

Zoning Ord. § 156.007 (emphasis added).

I. The Argument offered by Respondent in support of the BZA’s decision is untenable.

Respondent does not dispute (nor can it) that the determination BZA’s decision was based upon was the orientation of the Lot and building. Further Respondent does not dispute (nor can it) that the decision to assign the front setback to the West boundary did not create the greatest amount of buildable area.

Instead, because Respondent cannot justify the BZA’s determination of front vs. back under the plain language of Section 156.007, it takes the position that this Ordinance does not apply to the determination of front vs. back. Respondent claims that this Ordinance only concerns the identification of the “sides” (*i.e.*, for clarity “sides” being those boundaries which assuming a rectangular lot shape would be perpendicular to the front and back). Respondent’s position is that once the “sides” are identified under Section 156.007, that it is then free to decide which of the remaining boundaries is the front and which is the back.

However, this position is untenable. Section 156.007 speaks to the creation of the “Building Line.” The Ordinance plainly describes this as being measured from each of the lot lines to create the area in which the “building or structure must be placed.” Zoning Ord. § 156.007. In order to establish the area in which the building must be located it is fundamental that that all sides be identified. As explained at the hearing, the building line creates a “box” within the Lot and the structure cannot extend outside that box. However, that box (and thus the “Building Line”) cannot be completed without identifying the front and back. Thus, it simply cannot be that Section 156.007 does not speak to identifying the front and back.

II. Respondent’s decision is inconsistent with the plain language of the Ordinance.

“When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used.” *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 10, 776 S.E.2d 753, 758 (Ct. App. 2015) (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.”).

Here, the BZA’s ruling contradicts the plain language of Section 156.007 because: (A) its decision does not “provide the greatest amount of buildable area;” and (B) the BZA failed to make

its determination “regardless of lot and building orientation.” *See* Zoning Ord. § 156.007.

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

Section 156.007 plainly requires the determination to be made “so as to provide the greatest amount of buildable area.” Zoning Ord. §156.007. “Buildable Area” is defined as “[t]he maximum two-dimensional space on a lot within which a structure or structures can be built, as permitted by applicable setback[.]” Zoning Ord. §156.007. In other words, total lot area minus setback area.

There is no dispute that the North and South boundaries are subject to a side setback of ten (10) feet. The question then becomes, as between the East and West boundaries which is the front, and which is the back? Because “buildable area” is the total area of the Lot minus the setback areas, it becomes significant that the East boundary—at 137.29’ in length—is longer than the West boundary which measures only 110.06’. Thus, simple geometry demonstrates that applying the smaller front setback (*i.e.*, 15’) to the East boundary provides more buildable area than applying the larger back setback (*i.e.*, 25’) as the BZA did. Thus, the BZA’s ruling did exactly the opposite of what is required by the plain language of the Ordinance. *Id.*¹

Only by applying the front yard setback to the East boundary can the command to “provide the greatest amount of buildable area” be satisfied. 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]

¹ Because the side setbacks are the same on both sides, the BZA’s error is illustrated by comparing the total front and back setback area produced by treating the East boundary as the back versus treating the East boundary as the front. The calculations speak for themselves and establish that application of the rear setback to the East boundary increases the setback area thus reducing the buildable area, to a greater extent than would apply by application of the rear setback to the West boundary. *See* Appeal at p. 7 fn. 3.

obviously intended the statute to have some efficacy”). Had the Town’s 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 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].”).

B. 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.

Section 156.007 requires that the determination of the building lines be made “regardless of lot and building orientation.” However, lot and building orientation is precisely what the BZA based its decision on, reasoning that “the actual front yard of 15 feet allowed by [§] 156.315 (E)(1), in our opinion, would be . . . the access easement side or primary façade of the principal structure designed as the ‘front.’” (BZA Order p. 3). As a threshold matter, because the requirements for establishment of building lines under Section 156.007 is clear and unambiguous, the BZA should not have sought to justify its finding by reference to other sections of the Code. *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 v. Cty. of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009) (“When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used.”).

III. The BZA’s decision is inconsistent with the stated purpose for which the SR2-OD zoning district was created.

The BZA’s decision is also inconsistent with the purpose for which the Town created the special overlay district in which the Lot is located (*i.e.*, SR2-OD). *See 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”). Specifically, the Town created the SR2-OD to, among other things, “allow for the continued construction, addition to, and renovation of homes located [there]. . . by creating a special overlay zoning classification **with flexible yard requirements.**” Zoning Ord. §156.315 (A) (emphasis added). In serving this objective, Section 156.315 (E)(1) creates a minimum “front yard” requirement of fifteen (15) feet. Respondent seeks to justify the BZA’s decision by claiming it has the authority to make decisions as it wishes in order to “enhance the streetscape.” (Respondent’s Memo pp. 6-7). First, there is no basis for this claim—particularly in the context of this case where the Lot is landlocked. The Lot is simply not a part of the “streetscape” because it is not on a street.

Regardless, Respondent’s assertion is simply wrong. This is plain from the opening words of the Ordinance creating the special overlay district which make it abundantly clear: “**The purpose of the district is to allow for continued construction, addition to and renovation of homes located [there].**” *See* Zoning Ord. § 156.315(A) (emphasis added).

IV. Respondent’s assertion that the Appellants seek a variance is tantamount to an admission that the BZA erred.

Respondent claims that because the Court’s interpretation of the statute would apply town-wide, that Appellant should instead request a variance—rather than asking to have the law applied as written. *See generally* (Respondent’s Memo p. 8). However, this makes no sense. The law is the law and courts must apply it uniformly even when the Town does not. The notion that Appellant is only entitled to the protection of the law by seeking special dispensation is a non-sequitur.

Respondent’s position is fatally circular. The purpose of a variance is to grant an exception to application of the zoning ordinances for a specific lot, when due to some unique aspect of the lot, application of the ordinances would otherwise render the lot unusable for the purposes intended

by the zoning district in which it is located. Thus, Respondent's suggestion that a variance is the proper course can only make sense if it is first assumed that the zoning ordinances otherwise require increasing the buildable area, but that it is only the unique aspects of the Lot that prevent this from happening. However, this demonstrates Respondent's reasoning is fatally circular. If a variance is applicable, it could only be because the Ordinance requires an increase in buildable area, thus, Respondent's contention that their decision is not subject to the Ordinances' requirement of maximizing buildable area is defeated by their own logic.

Moreover, because a variance is, by its very nature, an exception to the application of the Ordinance, a variance would only be necessary here if it were assumed the Ordinance *required* the East boundary be subject to the larger back setback rather than the smaller front setback. However, Respondent has argued that the Ordinance is silent on this point and as a result it is not *required* to designate the East boundary as the back, but rather Respondent asserts it has the discretion to make that decision. (*See* Respondent's Memo in Opp.). Thus, here again Respondent's suggestion that a variance is the proper course serves as a tacit acknowledgment that the arguments it advances in support of its decision are based on flawed and unsupported reasoning and should be rejected.

V. This Court has neither the power nor jurisdiction to rewrite the Zoning Ordinances in favor of the purported public policy considerations advanced by Respondent.

Respondent could point to no provision of the Ordinance to justify the BZA's decision or substantiate the position it took on appeal. Rather, Respondent complains that to apply the Ordinance as Appellant suggests (and as it is plainly written into law) would "end the Town's ability to designate the 'front' vs. the 'rear' based on which side faces the street and/or the primary façade of the home" (Respondent's Memo p. 8). To be certain, the Town's ability to make the determination this way ended when the Town's legislature enacted an Ordinance that required that

decision be made “regardless of lot and building orientation so as to provide the greatest amount of buildable area.” *See* Zoning Ord. § 156.007. It is not for this Court to decide whether it agrees with the legislature’s decision to enact this Ordinance, or even whether it likes the result. This Court is constrained to interpret the law as it is written.

What Respondent is truly seeking and had gained by this Court’s denial of the instant appeal, is for this Court to engage in judicial legislation. To disregard the plain language of the law because Respondent does not like the result should not stand. *See e.g., Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964) (“There is a marked distinction between liberal construction of statutes . . . and the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced. The former is legitimate . . . while the latter is judicial legislation, forbidden by” the law.).

Respondent summarily asserts that to rule for Appellant would “[u]nquestionably [] lead to the diminishment of the beauty of the Town” because it would allow homeowners to orient their homes so as to maximize buildable area. Notwithstanding the utter lack of factual (or even anecdotal) support for this claim, Respondent overlooks that the issues implicated here are limited to the Special R-2 Overlay District in which predominantly all the effected homes have already been built. Moreover, its claim rests on the contention that the “front” must be the boundary facing the street when, to the contrary, the BZA’s own Order stated that orientation to the street is immaterial, and that under the Ordinance even where a parcel’s longer dimension borders the street it would still be considered the “side.” *See* (BZA Order p. 3). Ultimately, if Respondent desires an Ordinance that does not favor maximizing buildable area, then it should submit its arguments to the Town Council, which unlike this Court, can amend the Ordinance. Until then, the Ordinance plainly commands the determination be made “so as to maximize buildable area” and this Court

should apply the Ordinance accordingly rather than re-writing it. Zoning Ord. § 156.007.

This Court's denial of the instant appeal effectually opens the door to permit the BZA to ignore whatever provisions of the law it wants to serve its own agenda rather than applying the law as enacted by the Town's legislature. Neither this Court, nor the BZA (nor any judicial or quasi-judicial body) is afforded such power to nullify the legislature.

THEREFORE, Plaintiff respectfully requests this Court to alter or amend its prior Order, and instead find the BZA is constrained to follow the plain and unambiguous language of the Town's Zoning Ordinances and issue an order granting the instant appeal.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

By: s/ *TJ Rode*
 THOMAS J. RODE
 SC Bar No. 77480
 15 Middle Atlantic Wharf
 Charleston, South Carolina 29401
 Phone: 843-937-8000
 Email: thomas@tktlawyers.com
Attorneys for Plaintiff

January 19, 2022
 Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Mar 29 2022

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2021-CP-10-00785

The Wolf Marie Vernon Trust,.....Appellant,

v.

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

NOTICE OF APPEAL

The Wolf Marie Vernon Trust (“Appellant”) appeals the January 10, 2022, Order of the Honorable R. Ferrell Cothran, Jr., from which Appellant filed a Motion pursuant to Rule 59, SCRCF, and which was finally decided on March 21, 2022. Copies of the appealed Orders are attached hereto and incorporated by reference. Appellant received notice of the final Order on March 21, 2022.

s/Thomas J. Rode

Thomas J. Rode (SC Bar No. 77480)
THURMOND KIRCHNER & TIMBES, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401
T: 843-937-8000

thomas@tktlawyers.com

Attorneys for the Appellant

March 29, 2022
Charleston, South Carolina

Other Counsel of Record:

Brian L. Quisenberry, Esq.
Clement Rivers, LLP
PO Box 993
Charleston, SC 29402
T: (843) 724-6641
bquisenberry@ycrlaw.com
Attorneys for Respondent

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Mar 29 2022
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. 2021-CP-10-00785

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v.

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

PROOF OF SERVICE

The undersigned certifies that she served a copy of the foregoing **Notice of Appeal** to all counsel of record on March 29, 2022, by mailing a copy of the same, electronically or with proper postage affixed thereto, as follows:

Brian L. Quisenberry, Esq.
Clement Rivers, LLP
PO Box 993
Charleston, SC 29402
bquisenberry@ycrlaw.com
Attorneys for Respondent

S. Cerone
Shannon R. Cerone, Paralegal

**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

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Dec 14 2022

SC Court of Appeals

Wolf Marie Vernon Trust,

Appellant,

v.

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

CERTIFICATE OF COUNSEL

Pursuant to Rule 201(g), SCACR, the undersigned certifies that the Record on Appeal contains all material proposed to be included by any party, unless where duplicative, and not any other material.

THURMOND KIRCHNER & TIMBES, P.A.



THOMAS J. RODE, Bar No. 77480
15 Middle Atlantic Wharf
Charleston, South Carolina 29401
T: 843-937-8000
thomas@tktlawyers.com
Attorneys for Appellant

Record on Appeal 104