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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2022-000392
Circuit Court 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.

RESPONDENTS' FINAL BRIEF

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Respondents The Town of Mount Pleasant and the Mount Pleasant Board of Zoning Appeals ("Respondents", "Town" or "BZA") hereby submit this brief in response to Appellant The Wolfe Marie Vernon Trust's ("Appellant") brief. Respondents respectfully assert there is more than ample evidence in the record to support the decision of the BZA. (R. pp. 30-55.) As such, further review is not required. S.C. Code Ann. § 6-29-840(A); *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 466, 602 S.E.2d 76, 79 (Ct. App. 2004) (decision of the reviewing body will be upheld if there is evidence in the record to support its decision), *aff'd* 372 S.C. 230, 642 S.E.2d 565 (2007).

INTRODUCTION

The home in issue is located at 520 Whilden Street, in Mount Pleasant.[1] It sits too close to the rear setback line of the property to allow Appellant to build a proposed new rear addition. Appellant, therefore, seeks in this appeal to obtain a judicial declaration that the "rear" of their property should be treated as if it were the "front" in order to avoid rear property line set back requirements which are more stringent than front property line set back requirements. The Town's Zoning Official denied Appellant's request, the BZA unanimously affirmed the Town's decision, and the Circuit Court likewise affirmed the BZA's decision. This Court of Appeals should do likewise.[2]

[1] The home in issue is owned by a trust. (R. pp. 6-15; 20-29.)

[2] Although simplified for ease of reference, Appellant sought a determination from the Zoning Official that the west boundary of the property constituted the front yard for set-back purposes. The Zoning Official determined to the contrary. Appellant appealed the determination to the BZA. The BZA reviewed the determination *de novo* and affirmed the Zoning Official's determination. Appellant then appealed to the Circuit Court pursuant to *S.C. Code Ann.* § 6-29-820(A). (R. pp. 6-29). The Circuit Court affirmed the BZA's ruling and found by its initial Form 4 Order and later Order (responding to Respondent's Motion to Alter or Amend and/or for Clarification) that the Court's Order affirming the BZA's decision and the Zoning Official's determination were "fully supported by the law and the evidence . . . ." (R. pp. 1-3; R. pp. 4-5).

Appellant's argument distorts the definition of the term "Building Line" contained in the Town of Mount Pleasant Ordinance provision §156.007. Appellant argues that the definition precludes the Town from declaring the front lot line of Appellant's property the "front" because, according to the Appellant, the Town must make the decision of which is the front and which is the rear *regardless of orientation* and in a manner *that maximizes buildable area.* Appellant is wrong.

The provision upon which Appellant's argument relies is completely irrelevant to determining the front versus the rear. By its own terms, it only applies when determining "front and rear yards" as opposed to side yards. The Town is not prohibited from declaring or determining the "front" of the property. The BZA and Circuit Court correctly affirmed the Town's decision that the rear setback requirement applies to the "rear" of Appellant's property. This Court of Appeals should likewise uphold the decision of the BZA and the Circuit Court.

STANDARD OF REVIEW

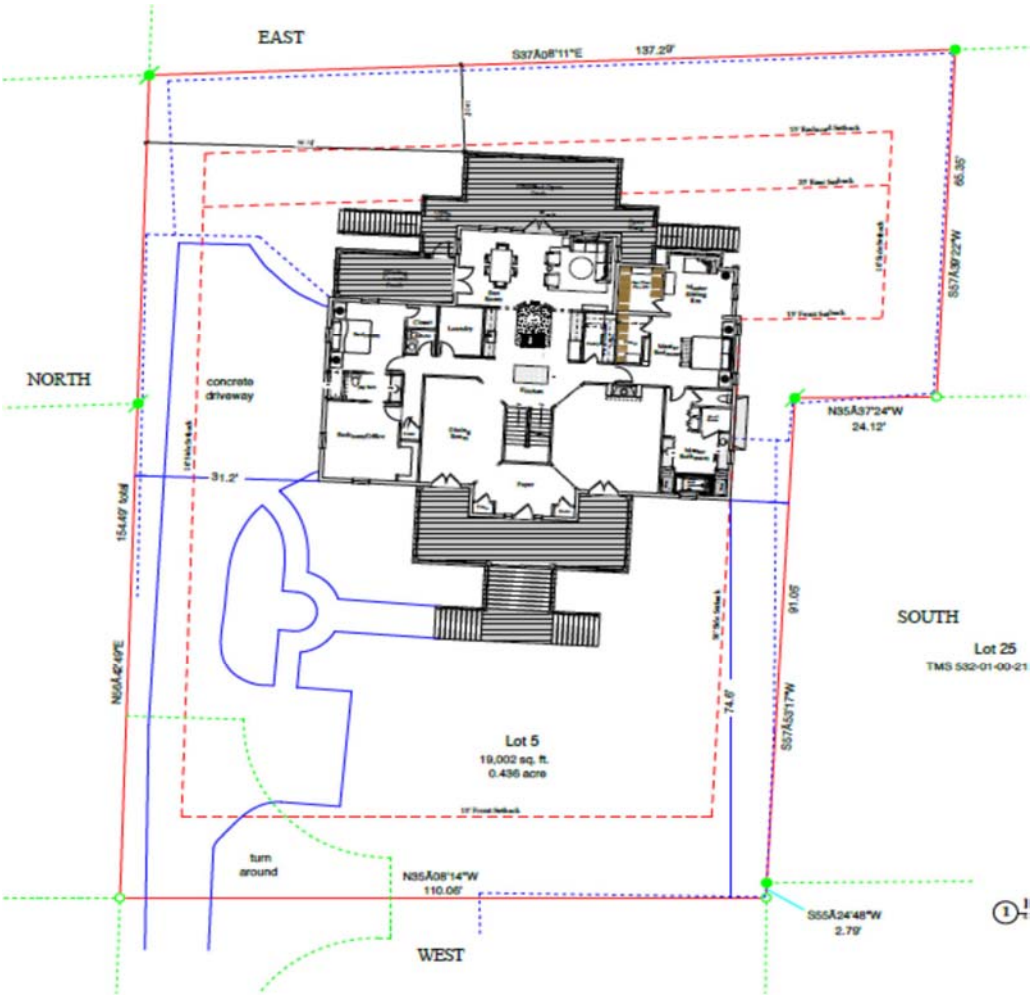
The standard of review for this Court of Appeals reviewing a Circuit Court affirmation of a BZA ruling is very narrow. This Court is to treat the findings of fact by the BZA in the same manner as a finding of fact by a jury. *See* S.C. Code Ann. §6-29-840(A). Concerning issues presented by the appeal, "the court shall determine only whether the decision of the board is correct as a matter of law". *McCrowey v. Zoning Bd. of Adjustment of City of Rock Hill*, 360 S.C. 301, 304, 599 S.E.2d 617, 619 (Ct. App. 2004).

"Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the

language used. An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. The statutory language must be construed in light of the intended purpose of the statute. *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). The appellate court "will not construe a statute in a way which leads to an absurd result or renders it meaningless." *Id*.

THE PROPERTY AT ISSUE

The Appellant's lot is only accessible via an access easement roadway, and does not border a public street. Appellant's property is as follows:



The "North" and the "South" lot lines are the longer sides of the property and the "West" and the "East" lot lines are the shorter sides. The "North" length of Plaintiff's property is the length along the access easement roadway. The "South" length consists of a border with a neighboring property.

The "West" lot line faces the direction of the public street where the roadway easement accesses the property, and is where the main, or front, entrance to the residence is located.[3] (R. pp. 56-57.) The "East" end of the property contains a border with a neighboring property and no access. Appellant seeks to build an addition to their residence on the "East" side of the property. Appellant hopes to secure a relaxed setback by having the East side designated as the "front". The only problem is it is the back of the home.

The Town's Zoning Official correctly determined that the "West" end of the property is the front, and the "East" end is the rear of the property. (R. pp. 25-27.) The BZA affirmed the Zoning Official's decision and denied the Appellant's appeal. (R. pp. 16-19.) The Circuit Court heard extensive arguments before it affirmed the ruling of the BZA. (R. pp. 1-29, 101-102); R. pp. 66-90.) This Court of Appeals should do likewise.

ARGUMENT

I. The BZA and Circuit Court Correctly Affirmed the Town's Decision and Denied Appellant's Appeal.

The Appellant takes issue with the Town's determination that the West end of their home is the "front" and the East end of their home is the "rear." Appellant points to the definition of "Building Line" in §156.007 of the Mount Pleasant Code of Ordinances for their position:

[3] *See*, the publicly accessible photograph of West End "Front" of Appellant's Property, attached as Exhibit A to Circuit Court Memorandum of Respondents, and also accessible at https://www.zillow.com/homes/520-Whilden-Street,-Mount-Pleasant,-SC29464_rb/10924063_zpid/?mmlb=g,0. The Town determined the front yard was, among other things, consistent with the location of the front entrance or façade primary to the home.

> **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***.[4]

The requirements contained in this definition - "regardless of orientation" and "so as to provide the greatest amount of buildable area" – apply only to two determinations: what lot lines are the shorter width (front/rear) and what lot lines are the longer length (sides). Importantly, these requirements do not apply to determining the front vs. the rear of the property. This is consistent with the language used in the applicable ordinance. *See Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (court should look to the language used in a legislative enactment).

The BZA agreed with the Town Administrator's determination and unanimously denied Appellant's appeal holding:

> 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 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 §156.315E.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'.

(R. pp. 16-19.)

Applying the Town's interpretation to Appellant's property, the longer lengths of the property are the North and South lot lines. As such, those lot lines are the "sides" of the property.

[4] *See* Mount Pleasant Code of Ordinances, §156.007. (Emphasis Added).

The width of the property, or shorter distances, are the East and West lot lines of the property. As such, those lot lines are the front and rear property lines. This decision is precisely what Section §156.007 is referencing. It must be made purely by examining the dimensions of the given property – the length versus the width – and regardless of lot orientation and to maximize the buildable area. The Town's application is precisely what the definition calls for, but is not consistent with Appellant's plans to expand their house.

The decision concerning which of the lot lines is the front and which is the rear is a separate and distinct determination. Importantly, Mount Pleasant's Ordinance is silent on the definition of front lot line and rear lot line. When a statute or an ordinance is silent on an issue, or a word is undefined, the customary and usual meaning is instructive in ascertaining the legislature's intent. *See White v. State*, 375 S.C. 1, 8, 649 S.E.2d 172, 176 (Ct. App. 2007); *see also Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005).

The Zoning Official and BZA determined the West end of Appellant's property is the primary façade and the main access point of the home. The common sense understanding of the "front" of a property, which includes an existing residence, is the main access point and primary façade of the home. Simply put, it is where the front of the home is located. Accordingly, the Town correctly determined the West end of the property was the "front". A contrary view would make the determination of the front yard and the rear yard and the corresponding set back requirements without meaning. They could be determined via manipulation by a property owner leading to a hodge-podge approach throughout this district. Our courts will not construe a statute in a way which leads to absurd results or renders provisions meaningless. *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012).

Once the front and the rear lot lines are identified, the Town then applies the appropriate setback distance based on the applicable zoning district. The Appellants property is located in the SR2-OD, Special R-2 Overlay District. This Special Overlay District contains a more relaxed fifteen (15) feet minimum setback in the front yard (compared to twenty-five (25) feet in other locations of the Town).[5] In this case, the Town correctly determined that a fifteen (15) feet front yard setback applied to the West end of Appellant's property.

Appellant, however, wants to build an addition to the rear of their residence rather than on the front. Accordingly, Appellant seeks to have the rear designated as the "front" to gain the relaxed fifteen (15) feet minimum setback for front yards in the overlay district. Appellant should not be allowed to disregard the Town's Zoning Ordinances and legislative enactments merely to suit their own purpose. Such a ruling would have a far greater impact beyond this one residence. Planning and zoning determinations are complex, determined by a deliberate process after careful debate and should not result in "patchwork zoning with little rhyme or reason." *I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). Appellant's proposed interpretation would do just that.

Appellant argues the definition of "Building Line" – "regardless of orientation" and "so as to provide the greatest amount of buildable area" – not only applies to the first step of determining the length and the width of the property, but also to determining which lot line is the front and which is the rear. This interpretation, however, mischaracterizes the language of the ordinance, Town's process, the legislative intent, and the practical realities in making these separate determinations. Such an argument rests on the supposition that there really is no

[5] *See* Mount Pleasant Code of Ordinances §156.315(E)(1); *see also* Mount Pleasant Code of Ordinances §156.303(C)(1) "Development Standards for Single-Family Detached" (Per Table) for R-2 Residential Districts (requiring a minimum front yard setback of 25 ft.).

difference between the front yard property line and the rear yard property line other than selecting them based upon obtaining maximum buildable space. According to Appellant, it is only then that setbacks are determined. This is not only inconsistent with a harmonious reading of the applicable ordinance provisions, but renders the language of Zoning Ordinance 156.007 superfluous. Such an interpretation is inconsistent with South Carolina law. Therefore, Appellant's argument should be rejected and the appeal should be denied.

II. The Purpose of the Special Overlay District is to Enhance the Streetscape.

Appellant argues that the BZA's decision is "inconsistent with the purpose for which the Town created the SR2-OD." The provision containing the purpose of the SR2-OD Special R-2 Overlay District provides as follows:

> The purpose of the district is to allow for the continued construction, addition to, and renovation of homes located in the older, built out neighborhoods between Coleman Boulevard and the Historic District, by creating a special overlay zoning classification with flexible yard requirements. **This will lead to an enhanced streetscape and a pedestrian- friendly environment**.[6]

Appellant focuses on the phrase "with flexible yard requirements" to argue the Town must make the determination of front versus rear in its favor. Appellant is mistaken.

The phrase "flexible yard requirements" references the reduced setback requirements contained in the Special R-2 Overlay District as compared to other zoning districts in the Town. For example, the setback requirement of fifteen (15) feet in the front yard in the Special R-2 Overlay District is *less stringent* than the twenty-five (25) feet setback requirements for front yards in other districts within the Town.[7] By reducing the restrictions on front setbacks, the

[6] *See* Mount Pleasant Code of Ordinances §156.315(A) (Emphasis Added).
[7] *See* Mount Pleasant Code of Ordinances §156.303(C)(1) "Development Standards for Single-Family Detached" (Per Table) for R-2 Residential Districts (requiring a minimum front yard setback of 25 ft.).

Town relaxed the yard requirements in the Special R-2 Overlay District to create the enhanced streetscape envisioned. That is what the phrase "flexible yard requirements" means. It does not mean the Town must make the front and back lot line determinations to maximize the Appellant's buildable area or suit their plans for home expansion.

Furthermore, "flexible yard requirements" is not the "purpose" of the Special R-2 Overlay District as Appellant contends. Rather, the smaller setbacks contained in the ordinance *lead to* the purpose of the Special R-2 Overlay District ("***This will lead to an enhanced streetscape and a pedestrian-friendly environment***."). The purpose of the District, therefore, is to create this enhanced streetscape and pedestrian-friendly environment.

The BZA's decision was consistent with the purpose of the District. The BZA's decision keeps the street facing and roadway easement access side of Appellant's property as the "front", which is where the relaxed set back is applied. Under Appellant's interpretation, the street facing side of any property in the District could be designated the "rear" and the back side the "front" because Appellant would make the decision "regardless of orientation" and "so as to provide the greatest amount of buildable area". This would cause the houses throughout the Special R-2 Overlay District to be facing different directions with no homogeneity or uniformity, which would defeat the enhanced streetscape purpose of the Special R-2 Overlay District. Accordingly, the Appellant's argument should be rejected and the appeal should be denied.

If this Court were to reverse the rulings of the BZA and Circuit Court regarding the interpretation of the Town's ordinances, it would apply ***Town wide*** - not just to Appellant's property. Such a ruling would end the Town's ability to designate the "front" vs. the "rear" of a property based on which side faces the street and/or the primary façade of the home. The result would be that houses throughout the Special R-2 Overlay District could face various directions at

the property owner's discretion so they could "maximize their buildable area". The true/actual street facing side could be designated as the rear for any building determination. Unquestionably, this would lead to the diminishment of the harmony of building/remodeling homes throughout the Special R-2 Overlay District and would detract from a harmonious streetscape. Consideration of such must be made by looking at the overlay district as a whole and not just as the Appellant's home in isolation or a vacuum.

CONCLUSION

Based on the foregoing reasoning and authority, Respondents respectfully request that this Court of Appeals affirm the decision of the BZA and the Circuit Court.

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RESPONDENTS' CERTIFICATION FOR FINAL BRIEF

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I, Stephen L. Brown, do hereby certify that Respondents' Final Brief complies with Rule 211(b), SCACR. Additionally, the undersigned hereby certifies that this filing complies with the Supreme Court order of April 15, 2014.

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