

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
ERIC and TRACY SHERRIER,)
Appellants,)
vs.)
THE TOWN OF HILTON HEAD)
ISLAND CONSTRUCTION BOARD OF)
ADJUSTMENT AND APPEALS, and)
THE TOWN OF HILTON HEAD)
ISLAND,)
Respondents.)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2022-CP-07-1274

ORDER DISMISSING
APPEAL

RECEIVED
Jun 02 2023
SC Court of Appeals

This case is an administrative appeal filed by Eric and Tracy Sherrier from an adverse decision of the Town of Hilton Head Island Construction Board of Adjustment and Appeals. A hearing on this appeal commenced at 1:30 o'clock, P. M., on January 13, 2023, via Webex. Present were Kathleen McDaniel, representing Eric and Tracy Sherrier (herein, the "Sherriers"), and Curtis L. Coltrane representing the Town of Hilton Head Island Construction Board of Adjustment and Appeals (herein, the "CBAA"), and The Town of Hilton Head Island (herein, the "Town").

The nature of the appeal is this: The Sherriers are the owners of real property located at 12 Park Road, Hilton Head Island, South Carolina (herein, "12 Park Road"). 12 Park Road is improved with a main residence and an accessory structure to the rear of the main residence.¹ In January of 2022, the Town served the Sherriers with a Notice

¹ See Sherriers' Amended Notice of Appeal, p. 3. In their Amended Notice of Appeal, the Sherriers refer to the accessory structure as the "rear structure."

Ex. A

of Violation concerning the accessory structure.² The nature of the violation is that the accessory structure was converted to residential living space after September 30, 1977, but was not brought into compliance with the flood zone regulations of Beaufort County, and then the Town, specifically the lowest floor elevation requirement.³ The Sherriers appealed the January 7, 2022, notice of violation to the CBAA, which upheld the notice of violation. This appeal to the Court of Common Pleas followed.

SCOPE OF REVIEW

In an appeal from an administrative board, the findings of fact made by the administrative board are binding on the Circuit Court unless the findings of fact have no evidentiary support in the record.⁴ The decision of an administrative board will not be disturbed if there is any evidence in the record supporting it.⁵ The Circuit Court may not substitute its judgment for that of the administrative board, even if the Circuit Court disagrees with the decision.⁶

The Circuit Court may correct errors of law.⁷ An administrative board's decision

² Record on Appeal, pp. 55-56.

³ The Town was not yet incorporated on September 30, 1977. Prior to incorporation, Hilton Head Island was part of unincorporated Beaufort County, South Carolina, and the Beaufort County code of ordinances governed. Following incorporation, the *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), governed. Record on Appeal, pp. 55-56; p. 69, l. 10 to p. 70, l. 12. As is discussed below, there is no evidence the accessory structure was used for residential living space prior to September 30, 1977, and the only evidence is that the accessory structure was converted to residential living space after 1985.

⁴ *Charleston County Parks & Recreation Commission v. Somers*, 319 SC 65, 459 SE2d 841 (1995).

⁵ *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 SC 230, 489 SE2d 630 (1997).

⁶ *Talbot v. Myrtle Beach Board of Adjustment*, 222 SC 165, 72 SE2d 66 (1952).

⁷ *Hodge v. Pollock*, 223 SC 342, 75 SE2d 752 (1953).

should not be disturbed unless the board's findings resulted from action which is arbitrary, an abuse of discretion, illegal, or in excess of lawfully delegated authority.⁸ An administrative board's decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.⁹ The party challenging an administrative body's decision bears the burden of proving the decision is arbitrary.¹⁰

Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, [citation omitted], a broader and more independent review is permitted when the issue concerns the construction of an ordinance.¹¹ The decisions of those charged with interpreting and applying ordinances should be given consideration and not be overruled without cogent reason.¹²

STATEMENT OF ISSUE ON APPEAL

In their Amended Notice of Appeal, the Sherriers state the following as the issues on appeal:

⁸ *Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 205, 516 S.E.2d 439, 440 (1999).

⁹ *Deese v. South Carolina State Board of Dentistry*, 286 S.C. 182, 332 S.E.2d 539 (Ct.App.1985).

¹⁰ *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999).

¹¹ *Charleston County Parks & Recreation Commission v. Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995).

¹² *Furr v. Horry County Zoning Board of Appeals*, 411 S.C. 178, 767 S.E.2d 221 (Ct. App. 2014).

1. Whether the CBAA erred in determining that Section 15-9-312(a), *Municipal Code of the Town of Hilton Head Island, South Carolina* (1983), is applicable to the accessory structure?¹³
2. Whether the CBAA erred in determining that the accessory structure is not a valid non-conforming use pre-existing the enactment of § 15-9-312(a)?¹⁴
3. Whether the Town is estopped from asserting a violation of § 15-9-312(a)?¹⁵

The Town and the CBAA re-state the issues on appeal as follows:

1. Is there evidence in the record to support the CBAA's finding of fact that the accessory structure was converted to residential living space after the year 1985?¹⁶
2. Is there evidence in the record to support The CBAA's finding that the accessory structure is in flood zone AE, and the accessory structure does not meet the lowest floor requirements of § 15-9 312(a)?¹⁷
3. Is there any evidence in the record to support The CBAA's finding

¹³ Sherriers Amended Notice of Appeal, p. 2.

¹⁴ Sherriers Amended Notice of Appeal, p. 2.

¹⁵ Sherriers Amended Notice of Appeal, p. 3.

¹⁶ This finding appears in the staff report and was adopted by the CBAA. Record on Appeal, p. 53, p. 152.

¹⁷ This finding appears in the staff report and was adopted by the CBAA. Record on Appeal, p. 53, p. 152.

that the accessory structure was converted to residential living space after September 30, 1977?¹⁸

4. Is there any error of law in the conclusion that 12 Park Road is governed by the requirements of § 15-9-312(a), *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983).¹⁹

RELEVANT ORDINANCE

12 Park Road is located in Flood Zone AE.²⁰ The relevant ordinance is § 15-9-312(a), *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), which reads:

In all areas within zones AE, AO, Shaded X, and X, the following provisions are required:

(a) Residential construction. New construction and substantial improvement of any residential structure (including manufactured homes) must be constructed so that the lowest floor, is elevated no lower than three (3) feet above the base flood elevation or thirteen (13) feet above mean sea level using NAVD88, whichever is higher. No environmentally conditioned space shall be allowed below the lowest floor. No basements are permitted. Should solid foundation perimeter walls be used to elevate a structure, flood openings sufficient to automatically equalize hydrostatic flood forces, shall be provided in accordance with the elevated buildings requirements in section 15-9-312(f). Residential structures may not be floodproofed in lieu of elevation.

FACTS AS FOUND BY THE CBAA

The Sherriers are the owners of 12 Park Road. 12 Park Road is improved with

¹⁸ This is a separate finding of the CBAA. Record on Appeal, p. 153.

¹⁹ This conclusion appears in the staff report and was adopted by the CBAA. Record on Appeal, p. 53, p. 152.

²⁰ Record on Appeal, p. 53.

residence and an accessory structure.²¹ 12 Park Road is located in a flood zone, specifically Flood Zone AE.²² The Town is a participant in the National Flood Insurance Program, and it must adopt and enforce an ordinance that is consistent with federal regulations.²³ Prior to the incorporation of the Town, Beaufort County became a participant in the National Flood Insurance Program effective September 30, 1977.²⁴ After that date all new construction, or making of substantial improvements to existing structures, is subject to the requirements of National Flood Insurance Program, including the minimum lowest floor requirements.²⁵ A change in the use of the accessory structure to residential living space must be done in conformity to the building code as adopted by the Town, and in conformity to § 15-9-312(a), *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983).²⁶

²¹ See Sherriers' Amended Notice of Appeal

²² Record on Appeal, p. 53. See also, Record on Appeal, p. 113, l. 6-8.

²³ Record on Appeal, p. 55; Record on Appeal, p. 69, l. 2 - 9.

²⁴ Record on Appeal, p. 69, l. 10-13; p. 72, l. 16-21.

²⁵ Record on Appeal, p. 69, l. 10 to p. 70, l. 12.

²⁶ Record on Appeal, pp. 55-57; Record on Appeal, p. 72, l. 16-25. The Sherriers argue that the accessory structure does not qualify as a "dwelling unit" under the Town's Land Management Ordinance [§ 16-10-105, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983)]. This argument misses the point for two reasons:

(a) § 15-9-312(a), *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983). in a different chapter of the municipal code (Title 15 as opposed to Title 16); and,

(b) the Sherriers admit that the use of accessory structure is residential. Mr. Sherrier testified: "I will only be referring to the rear structure as a bedroom and a rec room as these are the words that were used by the town officials and neighbors . . .". Record on Appeal, p. 78, l. 21-25. The Sherriers do not claim that the use of the accessory structure is anything other than residential.

There is no evidence in the record that the accessory structure existed as residential living space prior to September 30, 1977, and the CBAA so found.²⁷

In their Amended Notice of Appeal and in their argument at the January 13, 2023, hearing, the Sherriers point to email correspondence by and between members of the Town's staff regarding the issue of whether the accessory structure and the use of it violated the Town's Land Management Ordinance. This is an argument that the CBAA relied on the wrong evidence in making its findings. This argument is unavailing because under the scope of review, the question is whether the CBAA's fact findings are supported by any evidence. See text and cases under "Scope of Review" above. The existence of other or different evidence does not change the result, because a reviewing Court cannot substitute its judgment for that of the administrative board. *Talbot v. City of Myrtle Beach, supra*.

²⁷ None of the evidence offered by the Sherriers shows otherwise. The evidence introduced by the Sherriers shows:

- (a) The Beaufort County Tax record shows a date of February 19, 2021. The record shows the accessory structure was built in 1969, and it is described as a utility room, with no square footage assigned to it. There is a second page is line drawing that is reflective of the condition of the property as of February 19, 2021, not 1969. Record on Appeal, pp. 42-43.
- (b) The statement from Mark Piper speaks to the condition of the property in the year 1985. Record on Appeal, p. 32. The statement of Mark Piper was that he bought 12 Park Road in 1985, and that he first used the accessory structure as a home office, and later as living quarters. Record on Appeal, p. 32.
- (c) The statement of Mr. and Ms. Trenary speaks to the condition of the property from and after the year 1987. Record on Appeal, p. 33.
- (d) There is a second statement from Mr. Trenary to the effect that there was "an office or something" in the back structure." Mr. Trenary's second statement does not address the conversion to residential living space. Record on Appeal, pp. 46-47.
- (e) The statement of Mr. Lance Buntin speaks to the condition of the property since the year 2000. Record on Appeal, p. 34.
- (f) The statement of Tiffany Marshall speaks to the condition of the property since the year 2017. Record on Appeal, pp. 35-36.
- (g) The tax record showing ownership by Mark D. Piper is from the year 2009 and it has no detail regarding the accessory structure. Record on Appeal, p. 50.
- (f) The Sherriers' evidence of their own actions shows that during their ownership, they made substantial improvements to the accessory structure. The Sherriers added climate control and cooking facilities to the accessory structure without securing any permits. Record on Appeal, pp. 51-52. While the Sherriers resolved the code violations created by their own activity, the only evidence in the record is that the use of the accessory structure changed to residential living space after 1985, and the Sherriers

For the Sherriers to demonstrate that the accessory structure is a legally existing non-conforming structure as far as § 15-9-312(a), *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), is concerned, they must demonstrate that the accessory structure was residential living space prior to September 30, 1977. There is no evidence in the record to demonstrate that. The evidence is conflicting as to when the accessory structure was converted to residential living space, but the only evidence is that the conversion of the accessory structure to residential living space was after 1985.²⁸ There is no evidence in the record that the accessory structure complies with the requirements of § 15-9-312(a), *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983).

themselves made substantial improvements to the accessory structure.

²⁸ The evidence in the Record on Appeal is:

(a) The statement of Mary Ann Perri Jackson was that the accessory structure was a pole barn type structure during her ownership of 12 Park Road from 1983 to 1985. Record on Appeal, p. 54.

(b) The statement of Mr. Rick Trenary stated that the owner of the property had "an office or something" in the accessory structure as early as 1980. Record on Appeal, p. 46.

(c) Mr. Trenary's statement was that in the 1990s, the accessory structure was used as a home office and a rec room. Record on Appeal, p. 33.

(d) Mr. Trenary's statement was "After Hurricane Matthew, at least one of Mark Piper's sons lived in the back house for a period of time, and the entire property (front and back structure) was rented to Spinnaker for about a year." Record on Appeal, p. 33.

(e) The statement of Mark Piper was that he bought 12 Park Road in 1985, and that he first used the accessory structure as a home office, and later as living quarters. Record on Appeal, p. 32.

THERE IS EVIDENCE IN THE RECORD SUPPORTING EACH OF THE FINDINGS
OF THE CBAA AND THERE IS NO ERROR OF LAW

I. THERE IS EVIDENCE SUPPORTING THE CBAA'S FINDINGS OF FACT

Review of the CBAA's findings of fact is limited to determining whether there is any evidence in the record that supports the CBAA's findings of fact.²⁹ For each finding of fact, there is evidence in the record to support it, as follows:

(a) The accessory structure at 12 Park Road was converted to residential living space after the year 1985. The evidence in the record supporting this finding is:

(i) The statement of Mary Ann Perri Jackson was that the accessory structure was a pole barn type structure during her ownership of 12 Park Road from 1983 to 1985.³⁰

(ii) The statement of Mr. Rick Trenary that the owner of the property had "an office or something" in the accessory structure as early as 1980.³¹

(iii) Mr. Trenary's statement that in the 1990s, the accessory structure was used as a home office and a rec room.³²

(iv) Mr. Trenary's statement: "After Hurricane Matthew, at least one of Mark Piper's sons lived in the accessory structure for a period of time, and the entire property (front and back structure) was rented to Spinnaker for

²⁹ See Notes 5-12, *supra*.

³⁰ Record on Appeal, p. 54.

³¹ Record on Appeal, p. 46.

³² Record on Appeal, p. 33.

about a year.”³³

(v) The statement of Mark Piper that he bought 12 Park Road in 1985, and that he first used the accessory structure as a home office, and later as living quarters.³⁴

Any or all of these statements in the record support the finding that the accessory structure was converted to residential living space after 1985. As is set out under “Scope of Review” above, the decision of an administrative board will not be disturbed if there is any evidence in the record supporting it. There is evidence in the record supporting this finding.

(b) The accessory structure is in flood zone AE, and the accessory structure does not meet the lowest floor requirements of § 15-9 312(a). The evidence in the record supporting this finding is:

(i) § 15-9-312(a), *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), reads:

In all areas within zones AE, AO, Shaded X, and X, the following provisions are required:

(a) Residential construction. New construction and substantial improvement of any residential structure (including manufactured homes) must be constructed so that the lowest floor, is elevated no lower than three (3) feet above the base flood elevation or thirteen (13) feet above mean sea level using NAVD88, whichever is higher. No environmentally conditioned space shall be allowed below the lowest floor. No basements are permitted. Should solid foundation perimeter walls be used to elevate a structure, flood openings sufficient to automatically equalize hydrostatic

³³ Record on Appeal, p. 33. Hurricane Matthew was in October of 2016.

³⁴ Record on Appeal, p. 32.

flood forces, shall be provided in accordance with the elevated buildings requirements in section 15-9-312(f). Residential structures may not be floodproofed in lieu of elevation.

(ii) The staff report shows that 12 Park Road is in flood zone AE.³⁵

Under the plain text of the ordinance, 12 Park Road is in Flood Zone AE, and must be in compliance with the requirements of the ordinance.

(iii) Shari Mendrick testified that 12 Park Road is in the special flood hazard area.³⁶

(iv) The staff report shows that the accessory structure is slab on grade and does not meet the lowest floor requirements of § 15-9-312(a), *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983).³⁷

Any or all of these statements and evidence in the record support the finding that the accessory structure does not meet the lowest floor requirements of § 15-9 312(a). The decision of an administrative board will not be disturbed if there is any evidence in the record supporting it. There is evidence in the record supporting this finding.

(c) There is no evidence that the accessory structure was used as residential living space at any time prior to September 30, 1977. No witness gave a statement or testified that the accessory structure was utilized as residential living space prior to September 30, 1977. All of evidence in the record supports the finding and negates any inference

³⁵ Record on Appeal, p. 53.

³⁶ Record on Appeal, p. 113.

³⁷ Record on Appeal, p. 53.

otherwise, as follows:

- (i) The Beaufort County Tax record shows a date of February 19, 2021. The record shows the accessory structure was built in 1969, and it is described as a utility room, with no square footage assigned to it. There is a second page is a line drawing that is reflective of the condition of the 12 Park Road property as of February 19, 2021, not 1969.³⁸
- (ii) The statement of Mary Ann Perri Jackson was that the accessory structure was a pole barn type structure during her ownership of 12 Park Road from 1983 to 1985.³⁹
- (iii) The statement of Mr. Rick Trenary stated that the owner of the property had “an office or something” in the accessory structure as early as 1980.⁴⁰
- (iv) Mr. Trenary’s statement was that in the 1990s, the accessory structure was used as a home office and a rec room.⁴¹
- (v) Mr. Trenary’s statement: “After Hurricane Matthew, at least one of Mark Piper’s sons lived in the back house for a period of time, and the entire property (front and back structure) was rented to Spinnaker for

³⁸ Record on Appeal, pp. 42-43.

³⁹ Record on Appeal, p. 54.

⁴⁰ Record on Appeal, p. 46.

⁴¹ Record on Appeal, p. 33.

about a year.”⁴²

(vi) The statement of Mark Piper that he bought 12 Park Road in 1985, and that he first used the accessory structure as a home office, and later as living quarters.⁴³

Any or all of these statements and items in the record support the finding that the accessory structure was not used as residential living space prior to September 30, 1997, and the only evidence in the record is that the accessory structure was converted to residential living space at some point after 1985. The decision of an administrative board will not be disturbed if there is any evidence in the record supporting it. The only evidence in the record supports this finding.

II. THERE ARE NO ERRORS OF LAW

On appeal, the Circuit Court can correct errors of law. In this case, there is no error of law. The plain text of ordinance is that it applies to all areas in Flood Zone AE, and 12 Park Road is in Flood Zone AE. The Sherriers argue that this ordinance is inapplicable to 12 Park Road for a variety of reasons, all of which ignore the plain language of the ordinance, which is that it applies to: “. . . all areas within zones AE . . .” The Sherriers do not argue that 12 Park Road is not in flood zone AE, and the Sherriers presented no evidence to show that 12 Park Road is not in flood zone AE. There is no error of law because the plain text of the ordinance is that it applies in “all areas” of

⁴² Record on Appeal, p. 33. Hurricane Matthew was in October of 2016.

⁴³ Record on Appeal, p. 32.

flood zone AE.⁴⁴

CONCLUSION

The Sherriers bear the burden of proving that the decision of the Construction Board of Adjustments and Appeals is without evidentiary support in the record, or that

⁴⁴ The Sherriers also argue that the Town is estopped to enforce § 15-9-312(a), *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), against 12 Park Road. The Sherriers' estoppel argument is based on the following facts:

1. The Sherriers completed unpermitted work at 12 Park Road for which they received citations. Record on Appeal, pp. 51-52.
2. Among other things, the unpermitted work by Sherriers included the installation of heating and air conditioning units (mini splits) and a stove in the accessory structure. Record on Appeal, pp. 51-52.
3. The installation of the stove meant that the accessory structure would be counted as a separate dwelling unit on a single family lot which was a violation of the Town's Land Management Ordinance [§ 16-1-101, et seq. *Municipal Code of the Town of Hilton Head Island, South Carolina* (1983)]. Record on Appeal, pp. 51-52.
4. The Sherriers rectified the violations by taking steps to obtain permits for the unpermitted heating and air work, plead guilty on the citations, and removed the stove to resolve the zoning violation. Record on Appeal, pp. 51-52.

The Sherriers' claim is that they changed their position to their detriment by resolving the building code and zoning code violations. The resolution of the Sherriers' citations for un-permitted work is not a detrimental change in position, and the Sherriers cite no authority for this proposition. Second, the Sherriers do not contend that they either bought 12 Park Road or made the substantial improvements to 12 Park Road because anyone connected with the Town advised them that § 15-9-312(a), *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), does not apply to 12 Park Road or the accessory structure.

As a general rule, estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy. To prove estoppel against the government, the relying party must prove: (1) the lack of knowledge and of the means of knowledge of the truth of the facts in question; (2) justifiable reliance upon the government's conduct; and (3) a prejudicial change in position. *S. C. Department of Transportation v. Horry County*, 391 S.C. 76, 83, 705 S.E.2d 21, 25 (2011).

The Sherriers cannot prove an estoppel because they cannot show any detrimental reliance on any statement related to the flood regulations made by the Town. Also, the Sherriers cannot demonstrate a lack of means of knowledge as to the Town's flood regulations because the Town code is a matter of public record. Ignorance of the law cannot operate as the basis of an estoppel. *Bradley v. Rodelsperger*, 17 S.C. 9 (1882).

the decision is governed by any error of law.⁴⁵ The Sherriers have failed to prove that either of these things has occurred in this case.

For the reasons set forth above, the decision of the Construction Board of Adjustments and Appeals of The Town of Hilton Head Island, South Carolina, is affirmed, and the appeal of Eric and Tracy Sherrier is dismissed.

(Signature Page Follows)

⁴⁵ *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999) *Restaurant Row Associates v. Horry County, supra*.



Beaufort Common Pleas

Case Caption: Eric Sherrier , plaintiff, et al VS Hilton Head Island Construction Board Of Adjustment , defendant, et al
Case Number: 2022CP0701274
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2023-05-05 10:38:45 page 16 of 16