

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO.: 2021-CP-10-05211
CKC Properties, LLC,)	
)	
Appellant,)	
)	
vs.)	ORDER
)	REVERSING BOZA ORDER
)	IN PART AND AFFIRMING IN PART
The Town of Mount Pleasant, South)	
Carolina; The Town of Mount Pleasant)	
Board of Zoning Appeals; Michael)	
Robertson, in his official capacity as Zoning)	
Administrator; Justin O’Toole Lucey; 415)	
Mill St., Inc.; and 69 Scott Street, LLC,)	
)	
Respondents.)	

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Oct 13 2023
SC Court of Appeals

This matter comes before the Court by way of a Consent Order of Reference entered on October 19, 2022 (the “Consent Order”). The Consent Order referred the above-captioned case (the “BOZA Appeal”) and Case No. 2021-CP-10-04416 (the “DRB Appeal”), a related quasi-judicial zoning appeal involving the same development project.

On May 26, 2023, the Court conducted a hearing on the BOZA Appeal. Ross Appel appeared on behalf of Appellant CKC Properties, LLC (“CKC”). Brian Quisenberry, David Pagliarini, and James Ward appeared on behalf of Respondents the Town of Mount Pleasant, South Carolina (the “Town”) and the Town of Mount Pleasant Board of Zoning Appeals (the “BOZA”).¹ Respondent Justin O’Toole Lucey, Esquire, appeared on behalf of himself and Respondents 415 Mill St., Inc. and 69 Scott Street, LLC (collectively, “Lucey”), each of which own property adjoining or nearby to the subject development.

¹ By order dated May 4, 2023, the Court dismissed Michael Robertson, in his official capacity as Zoning Administrator finding that he was not a necessary party to this action.

The Court has fully considered CKC's Appeal Petition, the parties' respective memoranda of law, the arguments of counsel at the hearing, the record on appeal pursuant to S.C. Code Ann. § 6-29-830(A), and the applicable law.

This appeal consists of two issues. On the procedural issue, the court concludes Lucey's appeal was timely filed. On the substantive issue, Court finds the BOZA Order granting the appeal on the issue of off-street parking should be reversed as the BOZA committed legal error in reversing the Zoning Administrator's interpretation of "Guest Room."

RECORD ON APPEAL

On August 24, 2022, the BOZA filed the Record on Appeal in the instant BOZA Appeal pursuant to S.C. Code Ann. § 6-29-830(A). This filing included the following documents:

- Exhibit A - BOZA's Final Order;
- Exhibit B - September 27, 2021 Revised BOZA Meeting Agenda;
- Exhibit C - September 27, 2021 Staff Report;
- Exhibit D - September 27, 2021 BOZA Meeting Minutes;
- Exhibit E - September 27, 2021 Staff Brief 1;
- Exhibit F - September 27, 2021 Staff Brief 2;
- Exhibit G - September 27, 2021 BOZA Meeting Correspondence;
- Exhibit H - August 12, 2021 Letter from Mr. Lucey appealing to BOZA; and
- Exhibit I - Town's August 23, 2021 response letter confirming receipt of Mr. Lucey's August 12, 2021 appeal.

On September 27, 2022, CKC filed a Motion to Supplement the Record. On March 3, 2023, prior to the hearing on CKC's Motion to Supplement the Record, the BOZA filed a Supplement to the Record. The documents therein include the following:

- Exhibit J - September 24, 2021 Letter from Ross Appel;
- Exhibit K - September 27, 2021 Letter/Outline from Justin Lucey;
- Exhibit L - September 27, 2021 Letter/Memorandum from Colin Colbert;
- Exhibit M - September 27, 2021 Letter from Gabe Joseph; and
- Exhibit N - Processing Form for Lucey's Appeal.

On March 6, 2023, this Court held a hearing on CKC’s Motion to Supplement the Record. By Order dated March 8, 2023, the Court granted CKC’s request to transcribe the record from the BOZA hearing at its expense, but denied the Motion to Supplement the Record in all other respects.

On April 20, 2023, the BOZA filed a “Respondents’ Supplement of the Record,” which included the following documents:

- Exhibit O - BOZA Rules of Procedure;
- Exhibit P - Mt. Pleasant Code of Ordinances, § 156.410 – 413, as of September 27, 2021;
- Exhibit Q - Mt. Pleasant Code of Ordinances, § 156.007, as of September 27, 2021;
- Exhibit R - Mt. Pleasant Code of Ordinances, § 156.170-176, as of September 27, 2021; and
- Exhibit S- Transcript of BOZA September 27, 2021 Hearing.

Exhibit A through Exhibit S constitute the “BOZA Record” and are referenced below.

BACKGROUND ON APPEAL

The Shem Creek Boutique Hotel and Final Zoning Approval

This case involves a proposed twenty-seven (27) room “boutique hotel” located along Mill Street in Mt. Pleasant at TMS Nos. 517-16-00-058, -057, -034, and -035 (the “Properties”). (BOZA Record, Exhibit A, p. 3). Shem Creek Boutique, LLC, an affiliate of CKC, is the owner of the Properties. CKC is the developer of the “Shem Creek Boutique Hotel” (the “Project”). (BOZA Record, Exhibit J, p. 1).

The Properties are base-zoned Neighborhood Commercial (“NC”) and located in the Boulevard Overlay District (BOD). (BOZA Record, Exhibit F, p. 1). There is no dispute that “Boutique Hotel or Inn” is a use permitted by-right under this zoning designation. (BOZA Record, Exhibit F, p. 1). The BOZA Order confirms this finding:

We find that the proposed development of a Boutique Hotel is generally a permissible use for these parcels, and we find that the proposed development satisfies the definition of “Boutique Hotel.”

(BOZA Record, Exhibit A, p. 4). Neither Lucey nor the Town appealed this aspect of the BOZA Order.

CKC contracted to purchase the Properties in October 2020. Shortly thereafter, CKC and its engineers and architects began working with the Town's then long-time Zoning Administrator Kent Prause² to evaluate whether the Project complied with the Town's Zoning Ordinance. The BOZA Staff Report confirms the chronology as follows:

- “The Zoning Administrator discussed off-street parking requirements with the developer of the Shem Creek Boutique Hotel on or around February and March 2021.”
- “The developer proceeded with project design and site-specific development plans based on the determination made by the Zoning Administrator.”
- CKC “submitted plans to determine feasibility of the project on March 19, 2021.”
- CKC subsequently “filed an application and submitted plans for pre-application review (Conceptual Design Review Team) of the project on May 13, 2021. Conceptual DRT reviews projects for zoning compliance.”
- CKC “filed an application and submittal for Preliminary Design Review Board review on July 15, 2021. The submittal was hyperlinked to the Commercial Design Review Board July 2[8] (sic), 2021, meeting agenda.”
- “The [DRB] agenda [including the Project] was posted to the Town website on July 19th, 2021, at 11:35 am.”

(BOZA Record, Exhibit C, p. 5).

On or about June 9, 2021, the Design Review Team (“DRT”), which includes the Zoning Administrator, confirmed the site-specific development plan for the Project, including its off-street parking plan, complied with the Town's Zoning Code. This reaffirmed the Zoning Administrator's confirmation of zoning compliance from March 2021. After obtaining DRT approval, CKC

² Mike Robertson became the Town's Zoning Administrator on August 2, 2021, after Kent Prause retired.

applied for “Preliminary Approval of Site, Landscape, and Architecture” before the Commercial Design Review Board (the “DRB”). DRB approval is the only quasi-judicial entitlement necessary for the Project prior to securing construction and building permits. This appeal is pending.

Justin Lucey’s Appeal

On August 12, 2021, Lucey³ sent a letter to the Town’s corporation counsel objecting to the Project (the “Lucey Letter”). (BOZA Record, Exhibit H). The Lucey Letter challenged, among other things, numerous zoning, design, and policy decisions pertaining to the Project. (*Id.*). The Lucey Letter stated it was an appeal of the Zoning Administrator’s approval of the Project. (*Id.*).

On August 23, 2021, the Town’s assistant corporation counsel replied to the Lucey Letter (BOZA Record, Exhibit I) stating that some, but not all, of the matters raised in the Letter are appealable to the BOZA. (*Id.*) The Town’s assistant corporation counsel highlighted the parts of the Lucey Letter he believed were appropriately appealable to the BOZA and concluded:

While the Town acknowledges August 12, 2021, as the date of your appeal to BOZA for the applicable issues highlighted in green in Exhibit A, we ask that you complete the BOZA appeal application found on our website at www.tompsc.com/157/Applications-Forms. A \$200 fee is required for all BOZA appeals. (*Id.*).

Later that day, on August 23, 2021, Lucey completed and submitted the Town’s official BOZA appeal application through the Town’s online portal (the “Lucey Appeal”). (BOZA Record, Exhibit N). The Lucey Appeal included, as an exhibit, both the Lucey Letter (as highlighted by the Town’s assistant corporation counsel) along with the Town’s August 23, 2021 response letter. (*Id.*, pp. 3-8.). It also included an executed “Property Owner Acknowledgement Form” and a map of the area showing Lucey’s parcels in relation to the Properties. (*Id.*, pp. 9-10).

³ 415 Mill St., Inc. and 69 Scott Street, LLC are Lucey controlled and affiliated entities.

The Lucey Appeal claims the Zoning Administrator erred when he concluded that the specific plans for the Project satisfied the applicable use, off-street parking, height, and curb-cut regulations in the Town's Zoning Ordinance.

The BOZA Hearing on the Zoning Administrator Appeal

The BOZA heard the Lucey Appeal at its September 27, 2021 meeting. (BOZA Record, Exhibits A and D).

Prior to the meeting, the Town's new Zoning Administrator Michael Robertson filed two briefs for the BOZA's consideration. The briefs contain detailed analysis supporting the Project's final zoning approvals. (BOZA Record, Exhibits E and F). Exhibit E focuses entirely on the off-street parking requirements and approval for the Project, and Exhibit F focuses on all other zoning matters raised by the Lucey Appeal. (*Id.*).

Exhibit E summarizes the rationale behind Kent Prause's and Michael Robertson's approval of the Project's off-street parking plan as follows:

The boutique hotel project is comprised of three buildings: Building A, Building B, and Building C. Building A contains 19 guest rooms or lodging units as defined above. Buildings B and C contain 4 guest rooms or lodging units each. The total number of guest rooms in all three buildings is 27. Using the standards established in §156.171 [Table], the minimum off-street parking space requirement for the boutique hotel is a range of 27 to 54 parking spaces. Plans for the boutique hotel indicate that the project provides 35 total parking spaces: 1 parking space for each guest room or lodging unit in Building A (19) and two parking spaces for each guest room or lodging unit in Buildings B and C (16). The 35 parking spaces are in the range of 27-54 minimum parking spaces established in 156.171 [Table]. **The parking standards meet the minimum parking off-street parking standards established by Town Council in the ordinance.**

(BOZA Record, Exhibit E, p. 4) (Emphasis added).

Prior to the BOZA meeting, counsel for CKC submitted a letter with various exhibits opposing the Lucey Appeal. (BOZA Record, Exhibit J). The letter argued that the Lucey Appeal should be dismissed because it was untimely, Lucey lacked standing, and the Zoning Administrator

correctly determined the Project complied with all relevant regulations in the Town's Zoning Ordinance, including off-street parking. (*Id.*) CKC's principal, Colin Colbert, and counsel for the owners of the Properties also submitted letters in opposition to the Lucey Appeal. (BOZA Record, Exhibits L and M).

At the September 27, 2021 BOZA hearing, the Zoning Administrator stated that the Project satisfied all applicable zoning regulations, including off-street parking requirements. (BOZA Record, Exhibit S, 12:17–15:9; Exhibit D). The Zoning Administrator acknowledged the term “Guest Room” was undefined in the Zoning Code. He explained his interpretative process and how he arrived at the interpretation that a “Guest Room” meant an individually keyed unit – and not a bedroom. He concluded his remarks on off-street parking by stating, “Council does not give any discretion to the staff to determinate (sic) what would constitute the required parking. It is a range in the parking requirement, and we must approve it.” (BOZA Record, Exhibit S, 13:19-23).

After the Zoning Administrator's presentation, Lucey offered arguments in support of the Appeal. He did not discuss the issue of off-street parking. Instead, he focused on tree issues, floor area ratios, the definition of “boutique hotel,” and various other topics. (BOZA Record, Exhibit S, 7:21–12:14; 35:17–39:23; Exhibit D). Lucey also remarked as follows: “this board is here to judge the suitability of this project for this neighborhood ... and you have complete discretion on that.” (BOZA Record, Exhibit S, 9:1-4).⁴

The BOZA then allowed for public comment. CKC's counsel and representatives spoke in favor of the Zoning Administrator's approval and against the Lucey Appeal. Counsel for the owner of the Properties commented further on standing and mentioned prior attempts by Lucey to

⁴ As stated below, the BOZA is not a policy making body. Rather, its scope of review is confined to evaluating whether the Zoning Administrator's determinations were correct as a matter of law based on the text of the Zoning Ordinance and the facts in the record before the BOZA.

purchase the Properties. Finally, CKC's engineering and architecture team testified about their close collaboration with Town staff for nearly a year on the project and offered further support to the Zoning Administrator's application of the Zoning Code. Particularly compelling to this court was the testimony of Kevin Berry, the engineer for CKC, who illustrated the impact of the off-street parking calculations by showing the definition and purpose of the 1-2 parking range for projects such as this hotel. He argued that the Ordinance allowed for a 20% deviation from the actual number of spaces required that CKC was not utilizing while, at the same time, stating CKC was going to pave seven on-street parking spaces for the benefit of the area which do not count in favor of the developer. (Exhibit S, transcript of BOZA hearing, pp. 27-29. Emphasis added.)

After several public comments, the BOZA immediately moved to go into executive session to obtain legal advice. No specific purpose was mentioned. The BOZA met behind closed doors for approximately thirty (30) minutes. When the BOZA returned to the meeting, without any public discussion, a motion was immediately made to reverse the Zoning Administrator only as to the off-street parking calculation and to affirm the Zoning Administrator on all other matters.

The basis of the BOZA's motion was that the Zoning Administrator erred by interpreting the phrase "Guest Room," as used in the off-street parking calculations table. The BOZA concluded "Guest Room" means the number of rooms within each lodging unit (or beds). This overturned the Zoning Administrator's determination that a "Guest Room" means an individually keyed lodging unit. The motion passed unanimously without any public discussion by the members of the BOZA. (BOZA Record, Exhibit S, 40:8-41:21; Exhibit D).

BOZA Order and CKC's Appeal

The final order of the BOZA, memorializing its September 27, 2021 vote, was signed on October 25, 2021 (the “BOZA Order”). (BOZA Record, Exhibit A). The BOZA Order was mailed to the parties in interest on October 26, 2021. (*Id.*).

The BOZA Order found, among other things, that the Lucey Appeal was “timely filed and that [Lucey] has standing as an aggrieved party.” (BOZA Record, Exhibit A, p. 2). Reversing the Zoning Administrator’s interpretation of “Guest Room” as it appears in Section 156.171 of the Town’s Zoning Ordinance, the BOZA Order found “it was an error for the Town Administrator to find that ‘Guest Room’ and ‘Lodging Unit’ are identical.” (BOZA Record, Exhibit A, p. 4). “We find that Town Council’s use of the phrase “Guest Room” references the number of bed rooms in a proposed accommodation and lodging development, rather than simply the number of keyed lodging units.” (*Id.*).

On November 16, 2021, CKC filed a “Notice of Appeal, Demand for Pre-Litigation Mediation, and Appeal Petition” pursuant to S.C. Code Ann. §§ 6-29-820, and -825(A). The parties participated in a mediation session on January 27, 2022. The mediation was kept open after that date, and the parties continued settlement discussions. On June 24, 2022, the mediator filed an ADR Report declaring an impasse. On June 28, 2022, CKC filed an amended Appeal Petition (the “BOZA Appeal”).

According to its Appeal Petition, CKC appeals the BOZA Order only with respect to the reversal of the Zoning Administrator’s approval of the Project’s off-street parking plan and interpretation of “Guest Room.” CKC also challenged the timeliness of the Lucey Appeal and Lucey’s statutory standing.

STANDARD OF REVIEW

“The findings of fact by the board of [zoning] appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.” S.C. Code Ann. § 6-29-840(A). The court “must determine only whether the decision of the board is correct as a matter of law.” *Id.*

“A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567 (2007). “However, a decision of a city zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Id.* “An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)).

ISSUE

This appeal concerns the interpretation and application of the definition of a Guest Room for parking purposes of a Boutique Hotel situated in the Neighborhood Commercial zoning category of the Boulevard Overlay District within the Town.

CONCLUSIONS OF LAW

I. The BOZA erred by reversing the Zoning Administrator’s interpretation of “Guest Room” and the approval of the Project’s off-street parking plan.

CKC does not challenge the BOZA’s authority to review the Zoning Administrator’s interpretation of “Guest Room.” Rather, CKC argues the BOZA erred by reversing the Zoning Administrator’s and his predecessor’s interpretation that a “Guest Room” means a “Lodging Unit.” Essentially this appeal comes down to whether “Guest Room,” as it appears in the Town’s off-

street parking table found in Section 156.171, is an individually keyed lodging unit (the Zoning Administrator's interpretation) or each bedroom within an individually keyed lodging unit (the BOZA's interpretation). (emphasis added)

As an initial matter, the Court finds that the interpretation of "Guest Room" presents a *legal question* for this Court's review. "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). Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, "a broader and more independent review is permitted when the issue concerns the construction of an ordinance." *Id.* at 568, 666 S.E.2d at 894 *citing Charleston County Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). The determination of legislative intent is also a question of law. *Id.*

Since the interpretation of "Guest Room" presents a pure question of law, the Court need not defer to the interpretation expressed in the BOZA Order. S.C. Code Ann. § 6-29-840(A). Instead, the Court must conduct a *de novo* review of this ordinance interpretation dispute.

The Court's analysis starts with the observation that "Guest Room" is undefined in the Zoning Ordinance. (BOZA Record, Exhibit Q). This is significant for the purposes of this appeal because undefined terms in zoning ordinances must be liberally construed for the benefit of the property owner and in favor of the free exercise of property rights – *as a matter of law*.

"It is a well-founded principle of law that 'statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It follows that the terms

limiting the use of the property must be liberally construed for the benefit of the property owner.” *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 13, 776 S.E.2d 753 (Ct. App. 2015) (citing *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953)) (emphasis added). “Local governments have wide latitude to enact ordinances regulating what people can do with their property,” but they “must draft their ordinances so that people can have a clear understanding as to what is permitted and what is not. Otherwise, we must construe such ordinances to allow people to use their property so as to realize its highest utility.” *Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987).

The Court finds the Zoning Administrator’s five-page brief presented to the BOZA, defending his and his predecessor’s interpretation of “Guest Room” (BOZA Record, Exhibit E), to be well-reasoned and consistent with the applicable rules of statutory interpretation in the zoning context. In applying the 35 parking spaces to the range of 27-54 minimum established in the Ordinance Table at 156.171, the Administrator stated, “The parking standards meet the minimum ...off-street parking standards established ... in the ordinance” and further, “Town Council has determined ... the appropriate number of parking spaces and staff has no authority to require additional parking spaces beyond the minimum required.” (Ex. E, Application and Analysis).

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature.” *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In doing so, we must give the words found in the statute their “plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.” *Id.* at 499, 640 S.E.2d at 459.

Acknowledging “Guest Room” was undefined in the Zoning Ordinance, the Zoning Administrator performed an ordinary meaning analysis. (BOZA Record, Exhibit E). He concluded “[t]he term in common usage most closely associated with a *guest room* in a hotel ... is the term

hotel room.” (*Id.*) (emphasis in original).⁵ The Zoning Administrator went on to observe, in his professional judgment, that suite-style lodging units are commonly understood to be one of many different types of hotel rooms, all of which are considered individual lodging units.

Section 156.171 requires “1-2” off-street parking spaces per “Guest Room.” The Court finds that expressing the number of required spaces in terms of a *range* supports the Zoning Administrator’s ordinary meaning analysis and recognition that lodging units come in different configurations (single rooms, suites, etc.). It further reveals Town Council’s intent that some types of lodging units require more parking than others, as determined by the Zoning Administrator.

The BOZA’s narrow interpretation of “Guest Room” renders the “1-2” range irrelevant and superfluous. Under the BOZA’s definition, each bedroom, at a minimum, requires at least 1 off-street parking space. If that were indeed the meaning of “Guest Room,” there would be no reason to express the parking requirements in terms of a “1-2” discretionary range for the Zoning Administrator to apply in case-by-case applications. Had that been Town Council’s intent, Section 156.171 would simply have required only one off-street parking space per “Guest Room.”

Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995).

⁵ While the Town and the BOZA present various dictionary definitions of “guest room” to the Court (none of which are in the BOZA Record), the Court finds the dictionary definitions advanced by the Town and the BOZA are in the context of a single-family residence (a guest room within a home) – not in the accommodations context. For that reason, the court concludes these proffered definitions are inconsistent with the ordinary meaning of the term “guest room” in the accommodations context, as explained by the Zoning Administrator in Exhibit E.

Here, the Zoning Administrator applied the “1-2” space discretion granted by Town Council to require the larger suite-style units in the Project to have two off-street parking spaces while the smaller units only required one off-street parking space each.⁶ This interpretation and application is faithful to the range of parking spaces set forth in Section 156.171 for each “Guest Room,” is consistent with the term’s ordinary meaning, and honors the legislative intent.

The Court further finds the following excerpt from the Zoning Administrator’s brief to be especially persuasive on the issue of legislative intent:

The 2014 Parking Schedule revision changed the method of calculating parking for hotels and lodging from *sleeping room* to *guest room*. Following the rules of statutory construction, one must presume that the change in terminology by Town Council was intentional. (BOZA Record, Exhibit E, p. 3) (Emphasis in Original).

The BOZA Order concluded the term refers to “the number of bed rooms in a proposed accommodation and lodging development, rather than simply the number of keyed lodging units.” (BOZA Record, Exhibit A, p. 4). This fails to appreciate the 2014 amendment to the off-street parking table discussed in the Zoning Administrator’s Staff Report (Exhibit E). The BOZA’s interpretation is more in line with the term “sleeping room” as opposed to “Guest Room” which would comport with the prior Ordinance definition. Town Council’s amendment of the off-street parking table from “sleeping room” to “Guest Room” reveals the clear intent to calculate accommodations parking not on the basis of bed rooms within a unit. There is no evidence in the BOZA Record challenging the Zoning Administrator’s legislative history analysis.

⁶ Specifically, “Plans for the boutique hotel indicate that the project provides 35 total parking spaces: 1 parking space for each guest room or lodging unit in Building A (19) and two parking spaces for each guest room or lodging unit in Buildings B and C (16).” (BOZA Record, Exhibit E, p. 4) The math is simple: $19+16=35$ parking spaces. Under the BOZA interpretation of the ordinance, the Inn would have 0.54 parking spaces per bedroom. Under the staff interpretation, the Inn would have 1.3 parking spaces per unit. This falls within the range of 1-2 spaces required by the ordinance.

Given the foregoing, the Court finds the BOZA committed an error of law and an abuse of discretion by reversing the Zoning Administrator's interpretation of "Guest Room." While the BOZA surely has the authority to review the Zoning Administrator's interpretation and application of the Zoning Ordinance, the BOZA is a quasi-judicial body – not a legislative one. Contrary to Lucey's suggestion at the hearing, *the BOZA is not a policy making body*. The BOZA's sole role is to interpret the Zoning Ordinance, as written, and review final decisions of the Town's professional staff. Town Council is the appropriate body for making policy decisions.

This Court's analysis and conclusion are guided by the special rules of statutory construction in the zoning context outlined in *Helicopter Solutions, Inc. v. Hinde* and *Keane v. Hodge*. Zoning ordinances, especially undefined terms such as "Guest Room," must be "strictly construed" and "terms limiting the use of the property must be liberally construed for the benefit of the property owner."

The Zoning Administrator's interpretation is well-reasoned and consistent with the ordinary meaning of the undefined term "Guest Room" in the applicable ordinance. To the extent there are alternative interpretations of the term "Guest Room," they do not appear in the express language of the Zoning Ordinance, as they must to be enforceable. This court concludes the Zoning Administrator's interpretation therefore trumps the BOZA's interpretation.

A narrower definition of "Guest Room" may have been a preferred policy by Lucey, BOZA members, and some members of the public. The Court does not express a position on the pros and cons of these policy arguments. However, the BOZA – as a quasi-judicial body – lacks the authority to reach this policy outcome when it is not clearly and unambiguously compelled by the plain meaning of the ordinance. *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C.

14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989) (“Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.”)

The *exclusive* way for the Town to address the parking concerns raised by Lucey is by prospectively amending the Zoning Ordinance to define “Guest Room.” The South Carolina Supreme Court has long maintained that zoning amendments are legislative acts. *See Conway v. City of Greenville*, 254 S.C. 96, 104, 173 S.E. (2d) 648, 652 (1970) (action by landowner to have municipality rezone a portion of landowner's property in which the Supreme Court stated that it “recognize[d] that the adoption of zoning ordinances is a legislative function.”).

While not affecting this court’s decision, the Town enacted legislative policy after this appeal when the Town adopted Ordinance No. 21071 which, among other things, defined “Guest Room” for the first time and added a new definition for “Guest Suite.”⁷ The new definitions are consistent with the BOZA Order; however, Ordinance No. 21071 was enacted on December 15, 2021⁸ and so was not the law in effect at the time of the September 27, 2021 BOZA hearing. As “Guest Room” at that time was undefined, the BOZA was limited to reviewing and applying the law in effect when CKC’s Project was reviewed by staff and appealed to the BOZA.

For these reasons, the Court finds the BOZA abused its discretion and reinstates the Zoning Administrator’s interpretation of the term, which is consistent with the approved plans for the Project.

⁷ Ordinance No. 21071 reads, in relevant part, as follows:

GUEST ROOM (includes **BEDROOM**). Any room in a **HOTEL** or **BOUTIQUE HOTEL** containing one or more beds (excluding pull-out beds) provided for transient guests.

GUEST SUITE. Two or more **GUEST ROOMS** grouped together within a single rentable or leasable unit in any **HOTEL** or **BOUTIQUE HOTEL**.

⁸ The Court takes judicial notice of Ordinance No. 21071 pursuant to Rule 201, SCRE. *See, Martin v. Bay*, 400 S.C. 140, 732 S.E.2d 667 (Ct. App. 2012) (upholding the Charleston Master-In-Equity’s taking judicial notice of Charleston County’s zoning ordinances and their application).

II. The BOZA did not err in concluding the Lucey Appeal was timely.

In addition to challenging the interpretation of “Guest Room,” CKC argues the BOZA erred by finding the Lucey Appeal was timely filed. The procedure governing zoning administrator appeals, like the Lucey Appeal, is governed by the Zoning Ordinance and the BOZA’s Rules of Procedure. Section 156.411(A)(5)(a) governs timeliness as follows:

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. (Emphasis added).

Accordingly, for purposes of compliance with Section 156.410 this Court must analyze the date Lucey received actual notice of the staff’s determinations, and the date he filed his appeal.

The Zoning Administrator presented to BOZA during the September 27, 2021 hearing that Lucey’s appeal was timely filed. (*See* Exhibit, C, September 27, 2021 Staff Report). On August 12, 2021, Mr. Lucey served an appeal to the Town Attorney via letter detailing his numerous zoning concerns regarding the proposed Hotel. (*See* Exhibit H, August 12, 2021 Letter from Mr. Lucey Appealing to BOZA). Mr. Lucey’s letter states “Please ***accept this letter as an appeal*** of the following errors relating to the Mill Street Boutique Hotel project currently pending before the Design Review Committee.” (*See* Exhibit H, August 12, 2021 Letter from Mr. Lucey Appealing to BOZA) (Emphasis Added).

The Zoning Administrator noted that staff first published on July 19, 2021 determinations regarding the proposed Hotel development in their staff report for the July Design Review Board meeting. The Zoning Administrator concluded that July 19, 2021 was the earliest date Lucey could have received actual notice of staff determinations because that was the first date staff published

the determinations.⁹ Based on the August 12, 2021 date of Mr. Lucey's appeal letter, which Lucey submitted within thirty days of staff's July 19, 2021 posting, the Zoning Administrator concluded Mr. Lucey timely filed his appeal. BOZA accepted this analysis when they decided to hear Mr. Lucey's appeal. (*See Exhibit A, October 26, 2021 Final Order*).

Appellant first argues that this court should impute notice to Lucey as far back as April of 2021. Specifically, Appellant relies on an April 26, 2021 letter Lucey submitted to the Town complaining generally about the proposed development in opposition to an April 2021 height variance hearing. At the variance hearing Appellant sought to add an additional floor to the development. At that time, however, design plans showing the number of rooms and number of parking spaces had not yet been completed and staff had not yet made final determinations. **Appellant did not apply for preliminary approval with completed plans until July 15, 2021. (*See Exhibit, C, September 27, 2021 Staff Report*)**. Lucey's April 26, 2021 letter submitted in opposition to the height variance hearing thus cannot show he had actual notice of staff's final determinations regarding parking calculations because staff had not yet made its final determinations at that time.

Appellant also argues that even if Lucey's actual notice date is July 19, 2021, Lucey's appeal is still untimely because Lucey submitted his appeal on August 12, 2021 in the form of a letter to counsel for the Town instead of using the form prescribed by BOZA. Appellant argues that Lucey did not submit his processing form and pay his appeal fee until August 23, 2021 (*See*

⁹ At the hearing on this appeal, Mr. Lucey argued to this Court that he received actual notice on July 25, 2021 after reading a Post and Courier news article on the proposed development that cited to the July 19, 2021 staff report. This Court is unable to find any evidence in the record showing Mr. Lucey received actual notice on that date, and therefore the court uses July 19, 2021 as the actual notice date for purposes of the timeliness analysis.

Exhibit N, Processing Form for Lucey's Appeal), which Appellant points out is more than thirty days after staff's July 19, 2021 posting.

To support this argument, Appellant cites to BOZA's Rules of Procedure, which state in relevant part: "Requests to be heard before a Board shall be made by submitting the appropriate application form(s) approved by the Department of Planning and Development in accordance with the submittal deadline...", and "Applications may require a submittal and review fee in an amount specified by the schedule of fees established by the Town", "Failure to submit required information or forms and applicable fees may be grounds for rejection of the application." (*See* Exhibit O, BOZA Rules of Procedure). Appellant further relies on Ordinance Section 156.413(D), which states that "complete applications" are required, and that "incomplete applications will be returned to the applicant." (*See* Exhibit P, Mt. Pleasant Code of Ordinances Sec. 156.410 – 413, as of September 27, 2021).

This Court disagrees that BOZA's Rules of Procedure and Ordinance §156.413(D) strip BOZA of the ability to accept Lucey's August 12, 2021 appeal letter as the date of his appeal submission. Appellant misreads Mt. Pleasant Code of Ordinances §156.413(D). The section states that an incomplete application will be returned if it remains incomplete "prior to consideration by the Board." (*See* Exhibit P, Mt. Pleasant Code of Ordinances Sec. 156.410 – 413, as of September 27, 2021). BOZA received Lucey's processing form and fee long before consideration by BOZA on September 27, 2021. After receiving Lucey's appeal letter, **the Town Attorney informed Lucey that BOZA accepted his August 12, 2021 letter as his appeal, but requested that he prepare the form and pay the \$200 fee.** (*See* Exhibit I, Town's August 23, 2021 Response Letter Confirming Receipt of Mr. Lucey's August 12, 2021 Appeal). On August 23, 2021, Mr. Lucey

submitted his fee and processing form – well before the September 27, 2021 BOZA hearing. Thus, Section 156.413(D) does not render Lucey’s Appeal untimely.

CKC offers no authority holding that failure to file a processing form with a BOZA appeal letter constitutes an ineffective appeal for purposes of timeliness. The governing statute S.C. Code Ann. § 6-29-800(B) contains no reference to a processing form requirement in order to perfect a zoning appeal. “[A] regulation has the force of law, [but] it must fall when it alters or adds to a statute.” *Chapman* at 190-91; *S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’tl. Control*, 390 S.C. 418, 429 (2010); *see Goodman v. City of Columbia*, 318 S.C. 488, 490 (1995) (finding a regulation that required a particular form for review of a hearing commissioner’s decision added to the statute, which only required the filing of notice of intent to appeal within fourteen days).

This Court will not disturb BOZA’s determination on timeliness. BOZA determination that Mr. Lucey timely filed his appeal is affirmed.

III. The BOZA did not err in concluding Lucey possessed statutory standing as an adjacent property owner.

CKC argues Lucey lacked statutory standing to appeal the Zoning Administrator’s approval of the Project. In so doing, CKC maintains mere adjacency, in and of itself, does not render an appellant an “aggrieved” party under S.C. Code Ann. § 6-29-800(B) and Section 156.411(A)(5). The Court disagrees and concludes that neighboring property owners have statutory standing to appeal final zoning approvals. The Court further finds that Lucey is not a business competitor of CKC; therefore, *ATC South, Inc. v. Charleston Cty.*, 380 S.C. 191, 669 S.E.2d 337 (2008) does not apply.

FINAL ORDER AND JUDGMENT

IT IS THEREFORE ORDERED that the Lucey appeal was timely made and that Lucey has standing to challenge the actions of the Town and assert his appeal.

IT IS FURTHER ORDERED that the BOZA Order is reversed *only* with respect to its findings and conclusions regarding the interpretation of “Guest Room” and the Project’s compliance with the ordinance. The Court hereby affirms the Zoning Administrator’s interpretation of “Guest Room,” and reinstates the Zoning Administrator’s final planning approval of the Project’s off-street parking plan and site-specific development plan for the Project as approved by the Zoning Administrator.

IT IS FURTHER ORDERED that the BOZA Order affirming the Zoning Administrator’s approval of the Project, in all other respects, was not not appealed and are final decisions binding on all parties.

IT IS FURTHER ORDERED that the Project shall proceed through the development review process under the ordinances and regulations which existed at the time CKC submitted its applications to the Town and DRB and the Lucey Appeal was filed. The Project shall proceed to the DRB for Preliminary Approval of Site, Landscape, and Architecture.

IT IS FURTHER ORDERED that the Project is vested against the application of Ordinance No. 21071 and any other ordinance in conflict with the Project adopted after CKC submitted its applications to the Town and DRB.

IT IS SO ORDERED!

Signature page to follow



Charleston Common Pleas

Case Caption: Ckc Properties Llc VS Mount Pleasant South Carolina Town Of The ,
defendant, et al
Case Number: 2021CP1005211
Type: Order/Other

So Ordered

s/Mikell R. Scarborough 3062