

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Pacaso, Inc. and 2 SC Lighthouse, LLC, )  
 )  
 ) Appellants, )  
 )  
 ) Versus )  
 )  
Town of Sullivan’s Island, South Carolina; )  
Town of Sullivan’s Board of Zoning Appeals; )  
and Charles Drayton, in his official capacity as )  
Zoning Administrator; )  
 )  
 ) Respondents. )  
 )  
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IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2023-CP-10-01493

**ORDER  
AFFIRMING THE DECISION  
OF THE BZA AND DISMISSING THE  
PETITION FOR APPEAL**

**RECEIVED**

**Jan 30 2024**

**SC Court of Appeals**

On November 16, 2023, the Court heard oral argument on the Appellants’ Petition for Appeal and Motion to Supplement the Record on Appeal (hereinafter, the “Motion”). Appellant Pacaso, Inc. is a member of Appellant 2 SC Lighthouse, LLC that owns a residence located at 3115 Ion Ave, Sullivan’s Island, SC 29482 (the “Property”). The Appellants initiated this action under S.C. Code § 6-29-820 to appeal the final decision of the Town of Sullivan’s Island Board of Zoning Appeals (the “BZA”) regarding the use of the Property. In its decision the BZA affirmed a determination by the town’s Zoning Administrator finding that the Property was being operated as a Vacation Rental in violation of the town’s ordinances. After fully considering the parties’ oral arguments, respective filings including their briefs, and the applicable law, the Court affirms the decision of the BZA.

On appeal of a final decision of a local government’s board of zoning appeals, this Court’s role is to determine whether the decision of the BZA was correct as a matter of law. S.C. Code § 6-29-840(A); see also Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 33, 606 S.E.2d 209,

211 (Ct. App. 2004). The Court must treat the BZA’s findings of fact “in the same manner as a finding of fact by a jury, and the court may not take additional evidence.” S.C. Code § 6-29-840(A); see also Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004). The factual findings of the BZA must be affirmed, if they are supported by any evidence and “not influenced by an error of law.” Fairfield Ocean Ridge, Inc. v. Edisto Beach, 294 S.C. 475, 479-80, 366 S.E.2d 15, 18 (Ct. App. 1988). The Court must also “refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” Austin, 362 S.C. at 33, 606 S.E.2d at 211 (quoting Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)). “[A] decision of [the BZA] 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.; see also Heilker v. Zoning Board of Appeals for the City of Beaufort, 346 S.C. 401, 412, 552 S.E.2d 42, 48 (Ct. App. 2001) (“In zoning matters, this [c]ourt is obligated to apply the extremely narrow standard of review . . . . The local zoning boards, and not the courts, are the primary entities responsible for the planning and development of our communities.”).

At its meeting on February 9, 2023, when it heard the Appellants’ appeal of the administrative decision of the Zoning Administrator, the Appellants recognized that “[t]his case all comes down to the definition of vacation rental and whether what we’re doing at the property fits into that definition.” (**TOSI – PACASO 0216: I. 4-6**). That key term, “Vacation Rental,” is defined in Section 21-203 of the Town’s Zoning Ordinance to mean:

The commercial use of a Principal Building(s) that is: (1) rented, leased, assigned for tenancies; or (2) made available for use, occupancy, possession, sleeping accommodations, or lodging for one or more persons in return for valuable consideration for any period of less than twenty-eight (28) continuous days duration.

The Court finds that ample evidence in the record on appeal supports the BZA's factual determination that the use of the Property under the Pacaso program fits into the above definition of Vacation Rental. See, e.g., Respondents Br. in Opp'n to Appellants' Pet. for Appeal, filed Nov. 14, 2023, at 1-7, 8-10 (and the citations to the record therein). Moreover, the Court notes the BZA made a finding that the use of the Property in accordance with Pacaso's program violates the regulations set forth in Section 21-19 A of the Zoning Ordinance, which apply to the RS-Single Family District. The BZA also made the factual determination that such use violates the express prohibitions against Vacation Rentals found in Section 21-20 D and Article XIII (including Section 21-117) of the Zoning Ordinance. These provisions of the Zoning Ordinance regulate the use, not ownership, of property, and the BZA's factual determinations that they were violated is neither arbitrary, capricious, nor an abuse discretion. Nor is that determination incorrect as a matter of law. Rather, the factual determinations underlying the BZA's decision are supported by evidence in the record, and the BZA's application of the ordinances is reasonably related to a lawful purpose.

The Court has considered all the arguments that Appellants presented in their Petition, their Memorandum in Support, and their oral argument. The Court's failure to expressly address a particular argument does not mean it was not considered. Rather, the Court did not consider it persuasive. The Court's decision herein rules on all the grounds that Appellants presented and argued and denies the appeal based on those grounds as well.

Considering the foregoing, **IT IS ORDERED** that the decision of the BZA is **AFFIRMED**; the Appellants' Motion to Supplement the Record is **DENIED AS MOOT**; and the Appellants' Petition for Appeal is hereby **DENIED** and **DISMISSED**.<sup>1</sup>

[SIGNATURE PAGE FOLLOWS]

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<sup>1</sup> The Court declines to consider information not included in the record on appeal, as supplemented, because it was not before the BZA, and the Circuit Court is forbidden from taking additional evidence. See S.C. Code § 6-29-840(A). Even if it were to be considered, the Court finds that this additional information would not provide a basis for reversing the BZA's final decision and would not change the Court's decision on the appeal.



Charleston Common Pleas

**Case Caption:** Pacaso Inc , plaintiff, et al VS Sullivans Island South Carolina Town  
Of , defendant, et al  
**Case Number:** 2023CP1001493  
**Type:** Order/Dismissal

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766