

INITIAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2013-000786

Garry and Carolyn Coulter,  
George and Betsy  
Zimmerman,  
Michael and Michelle Shain,  
and  
Frederick Eugene Jones

Appellants,

v.

City of Greenville Board of  
Zoning Appeals  
City of Greenville, and  
Carol Stilwell,

Respondents.

INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN AFFIRMING THE BOARD OF ZONING APPEALS DECISION WHERE THE BOARD'S FINAL DECISION FAILED TO MAKE REQUISITE SPECIFIC WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW?
2. DID THE CIRCUIT COURT ERR IN AFFIRMING THE BOARD OF ZONING APPEALS DECISION WHERE THE SPECIAL EXCEPTION PERMIT APPLICANT FAILED TO PRESENT ANY THRESHOLD EVIDENCE REGARDING COMPLIANCE WITH ALL USE SPECIFIC STANDARDS?
3. DID THE CIRCUIT COURT ERR IN AFFIRMING THE BOARD OF ZONING APPEALS DECISION WHERE THE APPELLANTS WERE DENIED A MEANINGFUL OPPORTUNITY TO SPEAK AT THE PUBLIC HEARING?
4. DID THE CIRCUIT COURT ERR IN AFFIRMING THE BOARD OF ZONING APPEALS DECISION WHERE THE BOARD OF ZONING APPEALS' DECISION WAS UNSUPPORTED BY THE EVIDENCE?

## STATEMENT OF THE CASE

On May 21, 2012, Carol Stilwell filed an application for a special exception permit with the City of Greenville Board of Zoning Appeals ("BZA"), seeking to operate a bed and breakfast in a neighborhood zoned for residential use. A public hearing on the special exception permit was held on June 21, 2012, at which time the Board of Zoning Appeals voted to approve Respondent Stilwell's special exception permit. The Board of Zoning Appeals issued its final decision in writing on June 25, 2012. Pursuant to S.C. Code § 6-29-820(A), Appellants filed a timely notice of appeal with the Greenville County Court of Common Pleas on July 23, 2012.

On December 5, 2012, Appellants' administrative appeal was heard before the Honorable D. Garrison Hill. By order of the court dated February 19, 2013, Judge Hill affirmed the Board of Zoning Appeals decision to grant Respondent Stilwell's special

exception permit to operate a bed and breakfast. (*See* "Judge Hill Order"). Appellants filed a timely Motion to Alter or Amend Judgment on March 4, 2013 seeking specific findings and conclusions of law regarding issues raised in Appellants' administrative appeal. (*See* "Motion to Alter"). Appellants received Judge Hill's Order Denying Plaintiff (Appellants') Motion to Alter or Amend Judgment on March 15, 2013. (*See* "Denial Order"). Appellants filed a timely notice of appeal with the South Carolina Court of Appeals on April 15, 2013. **This appeal follows.**

#### FACTS

Appellants and Respondent Stilwell are residents of the same residential neighborhood located off Augusta Street in Greenville, South Carolina. Appellants' residences fall within the same R-6 residential zone and neighborhood as Ms. Stilwell's real property, and Appellants are affected by the BZA's decision. The City of Greenville R-6 zoning ordinance does not permit commercial use, including a bed and breakfast, without a special exception permit. (Greenville City Code § 19-4.1.2). In direct contravention of the City of Greenville R-6 zoning ordinance, Ms. Stilwell began operating a portion of her home as a multi-guest, temporary vacation rental around March of 2011. (B.Z.A. Transcript p. 17, lines 23-25; p. 18, line 1). Sometime in May 2012 a complaint was lodged against Ms. Stilwell for violation of the R-6, or "Single-Family Residential," zoning ordinance. (*Id.*, p. 8, lines 23-25; p.9, lines 1-4). Subsequently, Ms. Stilwell filed for a special exception permit to use her home as a bed and breakfast inn on or about May 21, 2012. (*Id.*, p. 9, lines 4-5). Proper public notice was presumably posted and a public hearing was held on June 21, 2012. Appellants, with the exception of

George Zimmerman, who was represented by his daughter, Mary Zimmerman, attended the public hearing. At the close of the public hearing, the BZA members moved and voted to approve Respondent Stilwell's special exception permit to operate a bed & breakfast inn from her home. (*Id.*, p. 55, lines 1-18).

## ARGUMENTS

- I. BECAUSE THE BZA FINAL DECISION FAILED TO MAKE THE REQUISITE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE BZA DECISION TO GRANT THE SPECIAL EXCEPTION PERMIT IS INVALID AS A MATTER OF LAW AND THE CIRCUIT COURT ERRED IN AFFIRMING THE BZA DECISION.

The BZA final decision, or order, approving Defendant Stilwell's special exception permit is patently invalid, as it lacks the requisite findings of fact. S.C. Code § 6-29-800(F) requires that "all findings of fact and conclusions of law must be separately stated in final decisions or orders of the board..." Section 6-29-800(F) also requires the final decision to be "in writing."

Here, the BZA issued its final decision in writing, signed by Zoning Administrator Bryan D. Wood on June 25, 2012. (*See* "Final Decision"). Although the Final Decision purports to list the BZA's findings of fact and conclusions of law separately, the final decision fails to make any finding of fact or conclusion of law in regards to compliance with the use specific standards. (*Id.* at p. 2). In fact, the BZA makes findings of fact and conclusions of law for all other areas but fails to do so for the use specific standards. In fact, the BZA Final Decision looks like a cut-and-paste copy of the city's Staff Report. (*Compare* Final Decision *with* Staff Report).

Compliance with the use specific standards for a bed and breakfast is required

before the BZA may grant a special exception permit. The BZA has the authority to approve a special exception permit "only upon a finding" that the applicant demonstrates compliance with the use specific standards. (Greenville City Code § 19-2.3.5(D)(1)(b)).

Without the necessary written findings of fact or conclusions of law that Respondent Stilwell's land use complies with all use specific standards, the BZA Final Decision is void and should be reversed.

The Circuit Court failed to make any finding or conclusion of law as to whether the Final Decision was valid despite the lack of written findings or conclusions of law with respect to the use specific standards. (Judge Hill Order).

II. BECAUSE THE SPECIAL EXCEPTION APPLICANT FAILED TO PRESENT ANY THRESHOLD EVIDENCE THAT THE USE COMPLIED WITH ALL USE SPECIFIC STANDARDS, APPLICANT FAILED TO MEET HER BURDEN OF PERSUASION AS SPECIFICALLY REQUIRED BY THE GREENVILLE CITY CODE OF ORDINANCES AND THE CIRCUIT COURT ERRED IN AFFIRMING THE BZA DECISION.

Respondent Stilwell, as the applicant, carried the burden to demonstrate that her application complied with the special exception permit standards. *See* Greenville City Code §§ 19-2.2.18(A)(1), 19-2.3.5(D). Among the specific standards in § 19-2.3.5(D), an applicant must demonstrate compliance with all use specific standards in section 19-4.3. Section 19-4.3.4(F) of the Code of Ordinances requires, in part, that the Bed & Breakfast be **at least 200 feet from another Bed & Breakfast or "group living facility."** (emphasis added). Respondent Stilwell failed to establish conformity with this use specific standard in § 19-4.3.

Specifically, Respondent Stilwell failed to present *any* testimony or other evidence establishing that her proposed Bed & Breakfast location was not located within

200 feet of another bed and breakfast inn or group living facility. At most, Respondent Stilwell's testimony mentions the existence of a "retirement center" or "assisted living" facility. (B.Z.A. Transcript p. 12, lines 23-25). At no point during the BZA hearing did Respondent Stilwell or any BZA staff member present *any* evidence that Ms. Stilwell's home was not within 200 feet of another bed and breakfast or group living facility, as required by the use specific standard for Bed & Breakfast Inns. The mere mentioning of a retirement center or assisted living center does not, in any way, establish that Ms. Stilwell's home is not located within 200 feet of another bed & breakfast inn or group living facility, as required by § 19-4.3.4(F). Therefore, the BZA could not properly make a finding of fact and conclusion of law with regards to Respondent Stilwell's compliance with the use specific standards.

The Circuit Court affirmed the BZA decision despite Respondent Stilwell's failure to proffer any evidence whatsoever that her home complied with this use specific standard. While Ms. Stilwell addressed parking, no one, including Ms. Stilwell, testified that her home was not within 200 feet of another bed and breakfast or group living facility. The Circuit Court Order affirming the BZA decision makes no finding or conclusion of law on Ms. Stilwell's burden of persuasion regarding this matter. Rather than relying on the applicant's testimony at the public hearing, the Circuit Court relied on a City of Greenville employee's ability to define Westminster Retirement Center as an "institution," not a "group living facility." (Judge Hill Order p.5). Although § 19-4.2.1(D) of the Greenville City Code authorizes a city administrator to classify undefined uses, it does not remove a special exception permit applicant's burden to demonstrate

compliance with the use specific standards. Furthermore, the BZA failed to make any specific finding as to the classification of the Westminster retirement center ("Westminster"). At the administrative appeal before the Circuit Court, counsel for the city acknowledges that there is no explicit finding in the BZA Final Decision that Westminster is an "institution" or "group living facility." According to counsel for the city, the administrator's determination or finding is "implicitly in the staff report." (Circuit Appeal Transcript p. 18).

The City of Greenville tries to cure these errors by citing the Staff Report, but this reliance is misplaced. Pursuant to Greenville City Code § 19-2.2.18, it is incumbent on the special exception applicant to demonstrate compliance with approval standards, not the city staff. At the administrative appeal before the Circuit Court, counsel for the City of Greenville pointed to the findings in the pre-public hearing Staff Report as evidence of compliance with use specific standards. In reference to the Staff Report, counsel for the City of Greenville stated, "That's the evidence. That's all the evidence the boards needs." (Circuit Transcript p. 15). Based on this oral argument and Judge Hill's Order, the Circuit Court appears to have substituted or supplemented Ms. Stilwell's insufficient evidence with the city's Staff Report.

In addition, the Circuit Court improperly applied the burden of proof regarding the use specific standards. Instead of applying the burden of proof established by Greenville City Code §§ 19-2.2.18(A)(1), 19-2.3.5(D), the Circuit Court relied on Respondent's application alone and Appellants' failure to allege and/or show that another impermissible structure is located within 200 feet of Ms. Stilwell's home. (Judge Hill Order p.6). The

BZA decision, affirmed by the Circuit Court, violates both the letter and spirit of the law.

If applicants are permitted to rest on their applications alone and/or the burden to demonstrate noncompliance falls on opponents, public hearings and local boards themselves will be rendered superfluous.

III. BECAUSE APPELLANTS WERE NOT PERMITTED TO SPEAK INDIVIDUALLY AT THE BZA HEARING, APPELLANTS WERE EFFECTRIVELY DENIED AN APPEARANCE AT THE PUBLIC HEARING IN VIOLATION OF THE GREENVILLE CITY CODE OF ORDINANCES AND THE CIRCUIT COURT ERRED IN AFFIRMING THE BZA DECISION.

The BZA public hearing procedure was flawed and inadequate as a matter of law.

First, the city is required to hold a **public hearing** for all applications for special exception permits. *See* Greenville City Code § 19-2.2.8(c). At the beginning of the meeting, attendees were informed that it was BZA policy or practice to limit all public portions of the hearing to ten minutes, exclusive of questions by board members. (B.Z.A Transcript, p. 6, lines 7-17). The BZA's decision to limit all public comment to ten minutes, and consequently leave all residents in opposition to a collective total of five minutes, was arbitrary, capricious and not reasonably related to a legitimate purpose.

The Greenville City Code states that "any person may appear at a public hearing and submit testimony, either individually or as a representative of a person or an organization." Greenville City Code § 19-2.2.18(A)(2). In the present case, Appellants and other residents in opposition were limited to an arbitrary time limit at the outset and told to elect one spokesperson to represent their collective interests. (B.Z.A Transcript, p. 7, lines 14-22). Appellants and other interested residents were denied an appearance at the public hearing, in direct violation of the city code. Although Mr. Coulter and Ms.

Zimmerman were able to speak briefly at the hearing, they were not planned group representatives. During their limited appearances, Mr. Coulter and Ms. Zimmerman were unable to fully express their own individual concerns, much less those of a unified group formed after the start of the public hearing. As will be discussed more fully below, community residents often have differing reasons for opposing a special exception permit, reasons that cannot be communicated by a single group representative.

Moreover, Ms. Stilwell and her supporters were given a much broader and richer opportunity to speak at the public hearing. Whereas Appellants' position was effectively limited to two speakers, Garry Coulter and Mary Zimmerman, Ms. Stilwell and her proponents were permitted broader testimony opportunities. After Ms. Zimmerman finished reading an opposition letter from her father and Appellant, George Zimmerman, the BZA permitted three witnesses to testify in support of Ms. Stilwell's application. First, neighbor Ken Padgett was permitted to testify about parking arrangements. (B.Z.A. Transcript p. 32-35). Second, Mary Ellen Wilkinson, a bed & breakfast owner in Traveler's Rest, was permitted to testify in support of Ms. Stilwell's special exception permit. Ms. Wilkinson, a self-proclaimed bed & breakfast "consultant," cited general "statistics" about a bed & breakfast's impact on a community. (B.Z.A. Transcript p. 35, lines 18-25; p. 36 1-19). Finally, Victoria Padgett was permitted roughly 30 seconds to testify in favor of Ms. Stilwell's special exception permit. (B.Z.A. Transcript p. 37, lines 9-25; p. 38, lines 1-12). In addition to limited speaking time, Appellants were denied an opportunity to present additional witnesses in the same manner as Ms. Stilwell's supporters.

Appellants and other neighborhood residents were further prejudiced by misinformation from the City Staff. Neighborhood residents were told by city staff that they could submit letters to the BZA in lieu of attending the public hearing in person. (B.Z.A. Transcript p. 23, lines 1-4). Many residents did in fact submit letters, but Appellants learned *at the meeting* the BZA could not and would not consider the contents of the letters in making their decision. Had Appellants and their neighbors been properly informed of the evidentiary rules and procedures, many more neighbors would have made arrangements to attend the public hearing and testify in opposition to the special exception permit application. However, it appears that even if more neighbors had appeared at the public hearing to oppose the special exception permit, their voices would still go unheard.

Not only were Appellants deprived of an opportunity to present testimony regarding their property values in the instant case, a policy limited to five minutes of opposition in *every* case is patently invalid. Admittedly, many issues before the BZA can be heard and concluded in less than five or ten minutes. In fact, many of the public hearing testimony portions of the June 21, 2012 meeting were successfully conducted in less than the allotted time. The Greenville City Council recognized that not every public hearing could be conducted under compressed timelines at the whim of a review board. The Greenville City Code permits a board such as the BZA to continue a public hearing, on its own motion, to a fixed date, time and place in the future. *See* Greenville City Code § 19-2.2.18(A)(5). The BZA acted arbitrarily and capricious when it either failed to recognize or ignored the special of the issues prompted by Ms. Stilwell's complaint and

rendered a decision without conducting a meaningful public hearing. The BZA's actions amounted to a mere rubber stamp on Ms. Stilwell's application, despite the statutory authority to continue and conduct a proper public hearing, permitting both sides to sufficiently present evidence.

Many of the grievances with Ms. Stilwell's special exception permit application cannot be summarized or communicated by a single neighborhood spokesperson, named on the spot at the beginning of the public hearing. Many of the opposing residents have been residing in the R-6 neighborhood for decades, some for generations, each with their own individual interests in the outcome. With regards to property value testimony in the special exception permit context, the South Carolina Court of Appeals recently held that "property owners can generally testify as to the value of and damage to their own property." *Wyndham Enters., LLC v. City of N. Augusta*, 735 S.E.2d 659, 662 (S.C. Ct. App. 2012). Consequently, neighbors cannot properly testify to a special exception permit's negative effect on the property values of the neighborhood as a whole, as the BZA policy effectively requires. *Id.* Based on the BZA's arbitrarily imposed time limits, it would be factually impossible for all special exception permit opponents to speak before the board and testify to the adverse impact on *their* residential property. Rather, the BZA should have recognized the unique danger of commercial encroachment in one of the most protected residential zones and continued the public hearing so the application could be given the proper time and consideration it deserved.

IV. BECAUSE THE BZA'S DECISION IS UNSUPPORTED BY THE EVIDENCE, THE BZA ABUSED ITS DISCRETION AND THE CIRCUIT COURT ERRED IN AFFIRMING THE BZA DECISION.

“An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *Cnty. of Richland v. Simpkins*, 560 S.E.2d 902, 904 (S.C. Ct. App. 2002). The BZA, a quasi-judicial body, abused its discretion both by rendering a decision unsupported by the evidence and by misapplication of the law. The Greenville City Code permits the BZA to review and decide applications for special exception permits and sets forth specific standards to follow. The Greenville City Code provides as follows:

A special exception permit shall be approved only upon a finding that the applicant demonstrates all of the following standards are met:

(1) *Special exception*. For a use identified as a special exception in subsection 19- 4.1.2, table of uses:

(a) *Consistent with the comprehensive plan*. The proposed special exception is consistent with the comprehensive plan.

(b) *Complies with use specific standards*. The proposed special exception complies with all standards in section 19-4.3, use specific standards.

(c) *Compatibility*. The proposed special exception is appropriate for its location and compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands, and will not reduce property values of surrounding lands.

(d) *Design does not have substantial adverse impact*. The design of the proposed special exception minimizes adverse effects including visual impacts of the proposed use on adjacent lands; furthermore, the proposed special exception does

not impose significant adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, vibration, and does not create a nuisance.

(Greenville City Code § 19-2.3.5(D)).

As explained in detail above, Respondent Stilwell failed to demonstrate that her Bed & Breakfast conforms to these specific standards. Furthermore, the BZA erroneously applied the use specific standards found in section 19-4.3.4(F).

A. Bed & Breakfast inconsistent with comprehensive plan.

The subject property is zoned R-6, or Single-Family Residential, by the Greenville City Code. The Greenville City Code explains that one of its general purposes is “to minimize the impact of commercial and industrial development on abutting residential districts and uses.” Greenville City Code § 19-3.2.1(F). The Greenville City Code further explains the specific purpose of R-6 as intending “to preserve and encourage single-family residential development with a minimum lot size of 6,000 square feet. Complementary uses customarily found in residential districts, such as community recreation facilities, places of worship, and schools may be allowed.” Greenville City Code § 19-3.2.2(A). The R-6 zone was created as one of the strongest protections against commercial encroachment, and therefore Ms. Stilwell’s commercial use in this neighborhood is incompatible.

B. Ms. Stilwell’s property fails to comply with use specific standards.

The BZA misapplied and/or ignored the use specific standards. The Greenville City Code requires, in part, that the Bed & Breakfast be at least 200 feet from another

Bed & Breakfast or “group living facility.” *Id* at § 19-4.3.4(F). The BZA has no authority to approve a special exception permit application that does not meet this use specific standard. Ms. Stilwell’s proposed Bed & Breakfast site is approximately 166 feet from a group living facility, Westminster retirement facility (“Westminster”).

Westminster facility is a “group living” facility under the Greenville City Code, characterized by communal living. Westminster serves prepared meals to residents, provides cleaning services to residents, and provides groups activities, all hallmarks of “group living” and distinguishable from “household living” under the Greenville City Code. (*Compare* § 19-4.2.2(A) *with* § 19-4.2.2(B)).

Here, the Circuit Court, like the BZA, failed to make a specific finding on Westminster. Instead, the Circuit Court heard oral argument that a city administrator had defined Westminster as an “institution” prior to the June 21, 2012 public hearing. (Circuit Transcript p. 18; Judge Hill Order p.5) In fact, counsel for the City of Greenville seems to acknowledge that this finding is absent in the BZA's decision, claiming the finding “is implicitly in the staff report.” (Circuit Transcript p. 18)

C. Bed & Breakfast Inn is incompatible with the particular R-6 residential zone.

Section 19-2.3.5(D)(1)(c) requires that the proposed special exception be compatible with the surrounding land including that the proposed exception “will not reduce property values of surrounding lands.” A commercial business such as Ms. Stilwell’s proposed bed & breakfast has a substantial negative effect on the neighboring residential property values. Commercial land use tends to increase the value of the commercial property while depressing the value of surrounding residential property.

Compounding the problem for Appellants and other neighbors is the fact that Defendant Stilwell has or may have plans to sell the property as a bed & breakfast or to sell the property to someone who will continue to use the property as a bed & breakfast. It is clear from Ms. Stilwell's testimony that she has contemplated a sale of the bed & breakfast in the future. (B.Z.A. Transcript p. 40, lines 8-23). Despite the special exception permit being limited to the applicant, Ms. Stilwell testified that her success with the bed & breakfast should be considered in granting the same special exception to a subsequent purchaser. *Id.* The effect on surrounding property values was never considered by the BZA. Rather the BZA focused its attention exclusively to traffic and noise concerns (B.Z.A. Transcript p. 47, lines 5-15).

As has been discussed in detail above, Appellants as well as other residents in opposition were denied an opportunity to present testimony and evidence showing the negative effect on neighborhood property values. Although Ms. Stilwell, as the applicant, alone bore the burden to show the special exception would not harm surround property values, Appellants were prepared to present testimony regarding the negative effect on their specific properties. Despite the inability for Appellants to present their evidence, the issue of surrounding property values is properly before this Court. In South Carolina, "...the sole preservation requirement for a first-level appeal of a zoning board's decision is that an appellant must set forth his issues on appeal in a written petition and file that petition with the circuit court before the thirty-day filing period expires." *Newton v. Zoning Board of Appeals for Beaufort Cnty.*, 719 S.E.2d 282, 284 (S.C. Ct. App. 2011). The statute allowing for a BZA appeal does not even require the appealing party to raise

the issue at the public hearing or even attend the public hearing. *Id.* Of course, had Appellants had an opportunity to speak more fully and raise this issue at the public hearing, they would have.

In the present case, Ms. Stilwell failed to demonstrate that the bed & breakfast would not negatively impact surrounding property values, and the BZA failed to consider the issue as required by Section 19-2.3.5(D)(1)(c) of the Greenville Code of Ordinances. Unable to speak on the matter at the public hearing, Appellants properly preserved this issue for appellate review by raising it in their first-level appeal. (Appellants' Amended Complaint, p.6).

D. Special exception permit results in substantial adverse impact.

A permit allowing Ms. Stilwell to operate a bed & breakfast from her home will have a substantially adverse impact, not just on those in the neighborhood, but those in the Augusta Street community as a whole. At the public hearing, both the applicant and those in opposition testified to the dangerous section of Augusta Road passing alongside Ms. Stilwell's residence and site of the proposed bed & breakfast. The special exception permit, as approved by the BZA, *requires* guest ingress and egress from August Road. (B.Z.A. Transcript, p. 41, lines 7-19; p.47, lines 11-13). At the public hearing on June 21, 2012 the BZA heard testimony from several witnesses as to the frequency and severity of auto accidents in front of Ms. Stilwell's property over the years. Ms. Stilwell, in her own testimony, agreed that the particular section of Augusta Street is dangerous. (B.Z.A. Transcript p. 43, lines 3-5). Ms. Stilwell correctly pointed out that the highway section is more dangerous to those who are not from Greenville or who do not know the area well.

*Id.* at lines 15-20. The danger will only increase with more out-of-town guests or travelers looking for the entrance to the bed & breakfast. Whether the BZA's decision poses a greater safety risk for unknowing guests or regular Augusta Street travelers, the result is a substantially adverse impact on the adjacent land.

In addition, bed & breakfast operation in the neighborhood will result in increased noise. To the limited extent Appellants were able to address the BZA at the public hearing, Mr. Coulter briefly described one incident in which several guests stayed out on Ms. Stilwell's porch drinking and smoking late into the night. (B.Z.A. Transcript p. 25, lines 11-16). Mr. Coulter and his wife could hear the men socializing from their bedroom next door. The activities and attitudes of transient guests are qualitatively different than permanent residents, particularly in a historic, family-oriented neighborhood. Despite Ms. Stilwell's diligence and good intentions, transient guests pose an increased risk for the neighbors, many of which have young children.

Despite Ms. Stilwell's testimony that she has not been operating at full capacity, the noise and traffic related to Ms. Stilwell's property will continue to increase over time as the bed & breakfast grows. Commercial traffic will not be limited to bed & breakfast guests alone. The BZA permit, as issued, will require an employee or agent to be at the home when Ms. Stilwell is not present. (B.Z.A. Transcript, p.54-55) Potential traffic will include up to four sets of guests, an employee/agent, Ms. Stilwell and any personal houseguests of Ms. Stilwell.

For the same reasons stated above, the Circuit Court abused its discretion in affirming the BZA's decision to grant Respondent Stilwell's special exception permit.


The Circuit Court affirmed the BZA's decision despite Respondent Stilwell's failure to demonstrate compliance with all of these standards. Rather than relying on a demonstration by the applicant, the Circuit Court appears to consider the Staff Report and Ms. Stilwell's application as evidence of her compliance. However, the Circuit Court refused to alter or amend its February 19, 2013 Order to make a specific finding of whether or not Respondent Stilwell's application was considered part of her evidence of compliance as requested in Appellants' Motion to Alter or Amend Judgment. (Denial Order).

#### CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court and remand to the City of Greenville Board of Zoning Appeals.

August 26, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Mills Ariail, Jr.', written over a horizontal line.

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AUG 28 2013

SC Court of Appeals

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

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In The Court of Appeals

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D. Garrison Hill, Circuit Court Judge

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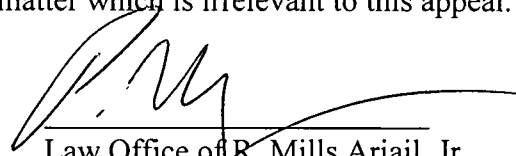
Appellant proposes the following be included in the Record on Appeal:

1. Decision, City of Greenville Board of Zoning Appeals, June 25, 2012;
2. City of Greenville Staff Report for Special Exception S-12-124;
3. Transcript of June 21, 2012 Board of Zoning Appeals Public Hearing (prepared by Katherine H. Crowe, CVR-M) pp. 6-9; 17-18; 23-25; 32-38; 40-41; 43; 47; and 54-55;
4. Amended Complaint;
5. Transcript of December 5, 2012 Circuit Court Administrative Appeal;
6. Order Affirming BZA Decision, January 9, 2013;
7. Order Approving the Grant of A Special Exception Permit by the Board of

8. Zoning Appeals, February 10, 2013;  
Motion to Alter or Amend Judgment;
9. Order Denying Plaintiff's Motion to Alter or Amend Judgment.

I certify that this designation contains no matter which is irrelevant to this appeal.

August 26, 2013



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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2013-000786

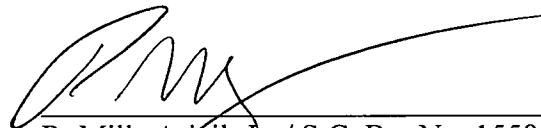
Garry and Carolyn Coulter,  
George and Betsy Zimmerman,  
Michael and Michelle Shain, and  
Frederick Eugene Jones .....Appellants,

v.

City of Greenville Board of Zoning Appeals,  
City of Greenville, and  
Carol Stilwell ..... Respondents.

PROOF OF SERVICE

I certify that I have served Appellants' Initial Brief and Designation of Record on Appeal by depositing a copy of the same in the United States Mail, postage prepaid, on August 26, 2013, addressed to their attorneys of record, Robert P. Coler, City of Greenville, P.O. Box 2207, Greenville, SC 29602 and John Patrick Riordan, Smith Moore Leatherwood, 300 East McBee Avenue, Ste. 500, Greenville, SC 29601.



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