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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Mikell R. Scarborough, Master-in-Equity

Case No. 2021-CP-10-05211
Appellate Case No. 2023-001615

CKC Properties, LLC, Respondent,

v.

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 Below,

Of which The Town of Mount Pleasant, South Carolina;
The Town of Mount Pleasant Board of Zoning Appeals;
Justin O'Toole Lucey; 415 Mill St., Inc.; and 69 Scott Street, LLC, are Appellants.

FINAL BRIEF OF APPELLANTS

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Pursuant to Rule 208(b)(6), SCACR, Appellants The Town of Mount Pleasant, South Carolina (the "Town"), and The Town of Mount Pleasant Board of Zoning Appeals ("BOZA") and Appellants Justin O'Toole Lucey ("Mr. Lucey"); 415 Mill St., Inc.; and 69 Scott Street, LLC (collectively, the "Lucey Parties") (all collectively, "Appellants"), join in this single brief.

STATEMENT OF ISSUES ON APPEAL

I. Where the Town's Zoning Administrator determined that the Proposed Hotel[1] complied with the requirements of the Town's then-applicable zoning code (chief among them for the purpose of this appeal, the off-street parking space requirements in Mount Pleasant Code § 156.171) and the Lucey Parties successfully appealed the Zoning Administrator's determination to BOZA, did the circuit court err in reversing BOZA's determination that the Proposed Hotel does not meet the off-street parking space requirements in § 156.171?[2]

A. Did the circuit court err in interpreting the "1 to 2" parking space per "Guest Room" requirement in § 156.171 as a "discretionary range" and, in turn, relying on this interpretation in support of its reversal of BOZA?

1. Is the circuit court's description of the Zoning Administrator's determination factually incorrect?

2. Did the circuit court err in interpreting the "1 to 2" parking space per "Guest Room" requirement in § 156.171 as giving the Zoning Administrator discretion to require either one or two parking spaces per "Guest Room" on a case-by-case basis?

B. Did the circuit court erroneously disregard the customary and popular definition of "Guest Room"?

C. Did the circuit court fail to consider that "Guest Room" is a different term from "Lodging Unit" in the Town's zoning code and, in turn, to recognize Town Council's intent for these different terms to have different meanings?

D. Did the circuit court err in its reliance on the proposition that "'[z]oning 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'"?

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[1] The "Proposed Hotel" is defined in the Statement of the Case.

[2] The Town enacted changes to its zoning code after BOZA decided the Lucey Parties' appeal. These changes do not apply to this matter, which is governed by the prior law. In this brief, references to the Town's zoning code are to the law applicable to this matter.

II. Even assuming, *arguendo*, that it did not err in reversing BOZA's determination that the Proposed Hotel does not meet the off-street parking space requirements in § 156.171, did the circuit court err in granting relief that exceeded its authority?

STATEMENT OF THE CASE

Respondent, CKC Properties, LLC ("CKC"), is a developer who wants to build a boutique hotel[3] in the Town on a site that runs along Mill Street between Lucas Street and Scott Street (the "Proposed Hotel").[4] 415 Mill St., Inc., and 69 Scott Street, LLC, are neighboring property owners, and Mr. Lucey, an attorney whose law firm is located at 415 Mill Street and is a tenant of 415 Mill St., Inc., owns 415 Mill St., Inc., and 69 Scott Street, LLC. (R. pp. 437:21–438:3; *see also* R. pp. 370–386.)

The Proposed Hotel is not a standard "suite style" hotel with a single bedroom per keyed lodging unit. Rather, it calls for a number of multi-bedroom/bathroom units, which include a separate living room and kitchen, that are large enough for multiple families to stay in a single keyed lodging unit, the largest of which are able to accommodate four families in a single keyed lodging unit. In total, the Proposed Hotel's twenty-seven (27) keyed lodging units contain sixty-four (64) separate bedrooms. (R. pp. 187–192.) And as planned, the Proposed Hotel has thirty-five (35) off-street parking spaces. (R. pp. 187–192.)

On July 15, 2021, CKC applied to The Town of Mount Pleasant Commercial Design Review Board (the "DRB") for preliminary approval of the Proposed Hotel's site, landscape, and architecture plans. (R. p. 201.) Public notice that the application was to come before the DRB was posted to the Town's website on July 19, 2021. (R. p. 201.) The application's appearance on

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[3] Under the Town's zoning code, a "hotel" is defined as "[a] building or group of attached or detached buildings containing lodging units intended primarily for rental or lease to transients by the day, week, or month." (R. p. 411.) A "hotel, boutique" (i.e., a boutique hotel) cannot "contain[] . . . more than 50 lodging units." (R. p. 411.)

[4] (R. p. 380.)

the DRB's agenda signaled to the public that the Town's Zoning Administrator had determined that the Proposed Hotel complied with the requirements of the Town's zoning code,[5] and on August 12, 2021, the Lucey Parties appealed that determination to BOZA. (R. pp. 236–241; *see also* R. pp. 194, 200–201, 210–215, 218–223, 242–248, 370–386.)

The Lucey Parties' appeal challenged the Zoning Administrator in a number of respects, but the only one relevant to this appeal is the determination that the Proposed Hotel met the off-street parking space requirements under Mount Pleasant Code § 156.171, which required all commercial accommodations and lodging to have "1 to 2" off-street parking spaces per "Guest Room." (R. pp. 421–429.) In determining the number of off-street parking spaces that the Proposed Hotel required under § 156.171, the Zoning Administrator interpreted "Guest Room" as synonymous with "keyed lodging unit," as opposed to "bedroom," and thus concluded that the Proposed Hotel's provision of thirty-five (35) off-street parking spaces for its twenty-seven (27) keyed lodging units was within the required range of "1 to 2" spaces per "Guest Room." (R. pp. 189–191); *see also* R. pp. 194, 200–201, 210–215, 218–223.)

BOZA heard the Lucey Parties' appeal on September 27, 2021,[6] and granted it by Final Order dated October 25, 2021, reversing the Zoning Administrator on the sole ground that the Proposed Hotel lacks the required off-street parking spaces under § 156.171. (R. pp. 189–191.)[7] As explained in its Final Order, BOZA's reversal of the Zoning Administrator turned on its interpretation of the term "Guest Room" as synonymous with "bedroom," not "keyed lodging unit":

> We disagree with the Town Administrator's interpretation of §156.171. The phrase "Guest Room" is undefined in the Town ordinances. The Board, however, finds it significant that Town Council uses the term "Guest ***Room***" to determine the number of

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5 (R. p. 5.)

6 (R. pp. 430–491; *see also* R. pp. 194, 210–217.)

7 BOZA denied the appeal in all other respects. (R. p. 191.)

> parking spaces required for a "Boutique Hotel" rather than using the term "Lodging ***Unit***," which is used in other parts of the Town Ordinances. Specifically, Town Council uses the term "Lodging Unit" in the Town Ordinance defining what constitutes a "Boutique Hotel":
>
> > **Hotel, Boutique (includes INN).** A building or group of attached or detached buildings ***containing not more than 50 lodging units*** intended primarily for rental or lease to transients by the day, week, or month. Such uses may provide additional services such as daily maid service, restaurants, meeting rooms, and/or recreation facilities.
>
> See, § 156.007.
>
> To determine whether an accommodation or lodging business constitutes a "Boutique Hotel" as opposed to a standard "Hotel", Town council asks Town staff to count the number of "Lodging Units". But for parking requirements, Town Council asks Town staff to count the number of "Guest Rooms". Town Council could have easily used the phrase Lodging Unit for purposes of the parking requirements with in §156.171 as well but did not do so. Instead, Town Council uses a different phrase - "Guest Room" within §156.171.
>
> We find the difference in phrasing by Town Council for purposes of parking requirements contained within §156.171 to have significance. We thus find that it was an error for the Town Administrator to find that "Guest Room" and "Lodging Unit" are identical. 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. This is logical given a townhouse unit with 4 bedrooms is likely to have more parking needs than a single one room hotel unit. Thus, the plans for this proposed development do not provide for sufficient parking spaces to satisfy the requirement under §156.171. Accordingly, we grant the appeal on this basis.

(R. pp. 190–191 (emphasis in original).)

On November 16, 2021, CKC appealed BOZA's decision to the Charleston County Court of Common Pleas, pursuant to S.C. Code Ann. § 6-29-820. (R. pp. 118–146; *see also* R. pp. 147–177.) Following a consent order of reference to the Charleston County Master-in-Equity, the

Honorable Mikell R. Scarborough (the "circuit court"),[8] the circuit court heard CKC's appeal on May 26, 2023, and ruled in CKC's favor by order filed July 14, 2023, agreeing with the Zoning Administrator's interpretation of § 156.171 and reversing BOZA as to the parking issue. (R. pp. 12–33.)[9] On July 24, 2023, Appellants timely moved the circuit court for reconsideration, pursuant to Rule 59(e), SCRCP,[10] and the circuit court denied the same by order filed September 21, 2023. (R. p. 34.)

This appeal timely follows. (R. pp. 652–658; Supp. R. p. 47–52.)

STANDARD OF REVIEW

"Appellate courts regard appeals from zoning decisions in the same manner as appeals from other circuit court judgments in law cases." *Newton v. Zoning Bd. of Appeals for Beaufort Cnty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011). "In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [Zoning] Board is correct as a matter of law." *Wyndham Enters., LLC v. City of N. Augusta*, 401 S.C. 144, 147–48, 735 S.E.2d 659, 661 (Ct. App. 2012) (citing S.C. Code Ann. § 6-29-840(A)). "Furthermore, '[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.'" *Id.* at 148, 735 S.E.2d at 661 (citing *Rest. Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)). "However, a decision of a municipal [Z]oning 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.* (citation omitted).

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[8] (R. pp. 1–4.)

[9] Besides this, the circuit court also affirmed BOZA as to its denial of all of the Lucey Parties' other grounds for appeal and as to its rejection of CKC's arguments that the Lucey Parties lacked standing to appeal the Zoning Administrator's determination to BOZA and that their appeal was untimely. (R. pp. 12–33.)

[10] (R. pp. 599–613.)

And while it is true that "issues involving the construction of an ordinance are reviewed as a matter of law under a broad*er* standard of review than is applied in reviewing issues of fact,"[11] deference to the zoning board charged with interpreting and applying the ordinance remains part of the equation and is not wholly displaced in favor of de novo review. *See Purdy v. Moise*, 223 S.C. 298, 302–05, 75 S.E.2d 605, 607–08 (1953) (finding zoning board's "construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor").

ARGUMENT

I. The circuit court erred in reversing BOZA's determination that the Proposed Hotel does not meet the off-street parking space requirements in § 156.171.

The rules of statutory construction apply to local ordinances. *See Mikell*, 386 S.C. at 158, 687 S.E.2d at 329 (applying the rules of statutory construction to interpret local zoning ordinance). The primary rule of statutory construction is to ascertain and give effect to the intent of the legislative body. *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used. *Charleston Cnty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers[12] and should not be read "in a way which leads to an absurd result or renders it meaningless." *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012).

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[11] *Mikell v. Cnty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009) (emphasis added) (citing *Eagle Container, LLC v. Cnty. of Newberry*, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008)).

[12] *Id.*

As ably explained in its Final Order quoted above (which explanation Appellants adopt and incorporate in support of this appeal), BOZA correctly interpreted "Guest Room" as synonymous with "bedroom" (as opposed to "keyed lodging unit") and, in turn, determined that the provision of a mere thirty-five (35) off-street parking spaces where the Proposed Hotel contains sixty-four (64) bedrooms (i.e., "Guest Rooms") is plainly inadequate under § 156.171. In doing so, BOZA faithfully employed the means of statutory construction to reach an end that honors the undeniably intended purpose of the lawmakers to address the practical, real-world issue (sufficient off-street parking) via a meaningful correlation of the term "Guest Room" to actual off-street parking needs. While, as addressed below, there are a number of different respects in which the circuit court's reasoning went astray, including its failure to accord BOZA the deference to which its interpretation of § 156.171 is entitled, at bottom, the circuit court's decision—which allows a single off-street parking space to suffice for any single keyed lodging unit, no matter how many bedroom there might be therein—does not effectuate, but rather frustrates, the legislative intent, and it should be reversed.

A. The circuit court erred in interpreting the "1 to 2" parking space per "Guest Room" requirement in § 156.171 as a "discretionary range" and, in turn, relying on this interpretation in support of its reversal of BOZA.

1. The circuit court's description of the Zoning Administrator's determination is factually incorrect.

According to the circuit court, the Zoning Administrator required that the smaller units in the Proposed Hotel provide one (1) off-street parking space and that the larger units provide two (2). (R. p. 25.) The sole support that the circuit court cites for this factually incorrect assertion is language in a zoning staff brief submitted to BOZA stating, "***Plans for the [Proposed 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 Building B and C

(16)." (R. p. 26 n.6 (citing R. p. 222).) But the staff brief that the circuit court cites is merely describing a ***summary of the developer's presentation*** concerning the plans with this breakdown (one space for units in Building A and two spaces for units in Buildings B and C). (R. pp. 218–223.)

There is no support in the record for the assertion that the Zoning Administrator exercised any discretion to determine whether a unit required 1 or 2 parking spaces based on its size. In fact, the Zoning Administrator argued before BOZA that the "1 to 2" language in § 156.171 did not provide him any such discretion. Among the Lucey Parties' arguments to BOZA was that the Zoning Administrator should exercise such discretion to at least require a minimum of two spaces per unit, and the staff brief affirmatively ***rejects*** the idea that the "1 to 2" language in § 156.171 gives the Zoning Administrator discretion to require either one or two parking spaces per "Guest Room" on a case-by-case basis. (R. p. 222 ("Staff is granted no authority by Town Council to set the minimum ratio").)

2. The circuit court erred in interpreting the "1 to 2" parking space per "Guest Room" requirement in § 156.171 as giving the Zoning Administrator discretion to require either one or two parking spaces per "Guest Room" on a case-by-case basis.

The circuit court cites to the "1 to 2" language in § 156.171 as follows:

> 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 that 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."

(R. p. 24 (emphasis in original).)

The circuit court's interpretation of the "1 to 2" parking space requirement is simply wrong. The parking requirement is expressed in a "1 to 2" range because accommodation developments must have ***at least*** one spot per "Guest Room" and ***no more than two spots*** per "Guest Room" as a paved impervious surface. Section 156.171 states the parking requirement as "1 to 2" so as to designate ***the maximum amount of impervious paved parking*** allowed on a given development. (*See* § 156.171(B), R. p. 424 (providing that, "in commercial zoning districts, ***all parking spaces provided above the minimum amount shall be surfaced with pervious materials***") (emphasis added).) Thus, the purpose of the "1 to 2" parking requirement is to set the range of impervious paved parking allowed and to require that any additional parking beyond two spaces per "Guest Room" be of a pervious material, such as gravel.

The "1 to 2" language has nothing to do with vesting any discretion in the Zoning Administrator to require either one or two spaces per "Guest Room" on a "case-by-case" basis as the circuit court erroneously concluded. As long as the proposed number of paved (i.e., impervious) parking spaces is at least one space per "Guest Room" and no more than two spaces per "Guest Room," the Zoning Administrator ***must*** approve it. No discretion is involved.

In further support of this point, Appellants would direct the Court's attention to the table set forth in § 156.171, a portion of which is reproduced here, which shows that Town Council uses a minimum-maximum (whether "1 to 2" or another range) for many commercial uses, not just accommodations and lodging:

Use Category	Use	Space Required	Unit of Measure	Notes
***	***	***	***	***
Commercial	Accommodations and lodging	1 to 2	Guest room	
	***	***	***	***
	Restaurant, bar, nightclub, lounge, including associated decks or plazas	1 to 2	100 sq. ft.	
	***	***	***	***
Civic	Church or place of public assembly	3 to 5	100 sq. ft. of Main assembly	For simultaneous uses, parking requirements for each use may be separately applied.
	***	***	***	***
	Medical care facility, such as a nursing home or hospital	1 to 4	Room	
	School: middle, primary, pre-school, educational nursery, day care, and similar uses	2 to 10	Classroom	

The circuit court incorrectly reasoned that the Zoning Administrator's supposed "1 to 2" parking space "discretion" is "recognition that lodging units come in different configurations (single rooms, suites, etc.) . . . [and] reveals Town Council's intent that some types of lodging units require more parking than others, as determined by the Zoning Administrator." (R. p. 24.) This proposition is simply invalid, as is the whole of the circuit court's reasoning relating to it.

B. The circuit court erroneously disregarded the customary and popular definition of "Guest Room."

The circuit court defined "Guest Room" synonymous with "Lodging Unit" and rejected BOZA's definition of "Guest Room" as synonymous with "bedroom." In doing so, the circuit court improperly disregarded the customary and popular definition of "Guest Room," which is "bedroom."

Despite acknowledging that "Guest Room" is undefined in the zoning code, the circuit court improperly disregarded longstanding South Carolina statutory construction law holding that, "when faced with an undefined statutory term, the court *must interpret the term in accord with its usual and customary meaning*." *Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005) (citing *Branch v. City of Myrtle Beach*, 340 S.C. 405, 532 S.E.2d 289 (2000) (emphasis added)).

There is no question that the usual and customary meaning of "Guest Room" is bedroom, as shown in the numerous dictionary definitions that Appellants cited to the circuit court that "Guest Room" means "bedroom" and not "lodging unit." (*See Merriam-Webster*: defining "Guest Room" as "a *bedroom* for a person who is invited to visit or stay in someone's home"[13]; *Collins*: "A guest room is a *bedroom* in a house or hotel for visitors or guests to sleep in"[14]; *Oxford Learner's*: defining "Guest Room" as "a *bedroom* that is kept for guests to use"[15]; *Macmillan*: defining "Guest Room" as "a *bedroom* for a visitor in someone's home or in a hotel"[16]).

Dictionaries are routinely utilized by Courts in determining the usual and customary meaning of a word or phrase,[17] and the circuit court erroneously discredited the dictionary

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[13] *Guest room*, Merriam-Webster Online, https://www.merriam-webster.com/dictionary/guest-room.

[14] *Guest room*, Collins Dictionary, https://www.collinsdictionary.com/us/dictionary/english/guest-room.

[15] *Guest room*, Oxford Learner's Dictionaries, https://www.oxfordlearners dictionaries.com /us/definition/english/guest-room (last visited May 3, 2023).

[16] *Guest room*, Macmillan Dictionary, https://www.macmillandictionary.com /us/dictionary/american/guest-room (last visited May 3, 2023).

[17] *See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 62, 766 S.E.2d 707, 733 (2014); *Est. of Nicholson ex rel. Nicholson v. S.C. Dep't of Health & Hum. Servs*., 377 S.C. 590, 596, 660 S.E.2d 303, 306 (Ct. App. 2008) (looking to Webster's and Black's Law Dictionaries to determine the ordinary meaning of "reside" in statutory interpretation dispute over same); *S.C. Pub. Int. Found. v. City of Columbia*, 431 S.C. 164, 169, 847 S.E.2d 257, 259 (Ct. App. 2020) (utilizing Black's Law and American Heritage College dictionaries to determine the customary meaning of "business" in determining that undefined

definitions Appellants cited here. According to the circuit court, "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***." (R. p. 24 n.5 (emphasis added).) This is incorrect. Two of the cited definitions explicitly state that "Guest Room" means "bedroom" ***in the context of a hotel***. *See Macmillan*: defining "Guest Room" as "a *bedroom* for a visitor in someone's home ***or in a hotel***" (emphasis added); *see also Collins*: "A guest room is a *bedroom* in a house ***or hotel*** for visitors or guests to sleep in" (emphasis added).[18]

C. The circuit court failed to consider that "Guest Room" is a different term from "Lodging Unit" in the Town's zoning code and, in turn, to recognize Town Council's intent for these different terms to have different meanings.

The circuit court failed to read the term "Guest Room" in its proper context. In reasoning that "Guest Room" should be read synonymously with "Lodging Unit," rather than "bedroom," the circuit court failed to recognize Town Council's intent that "Guest Room" is a different term from "Lodging Unit," which is used directly elsewhere in the zoning code, and improperly substituted its own judgment for that of Town Council.

"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." *Georgia-Carolina Bail Bonds*,

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"industrial or business" includes commercial student dormitories under the statute); *State v. Morgan*, 352 S.C. 359, 372, 574 S.E.2d 203, 210 (Ct. App. 2002) (citing to various dictionary definitions to interpret a criminal statute); *S.C. Farm Bureau Mut. Ins. Co. v. Oates*, 356 S.C. 378, 383, 588 S.E.2d 643, 646 (Ct. App. 2003) (utilizing numerous dictionary definitions to interpret an insurance policy); *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003) ("Dictionaries can be helpful tools during the initial stages of legal research for the purposes of defining statutory terms").

[18] And to be clear, there is no requirement that the dictionary itself be a part of the evidentiary record. *See Robinson v. Liberty Mut. Ins. Co*., 958 F.3d 1137, 1142 (11th Cir. 2020) (holding that courts can take judicial notice of dictionary definitions for purposes of interpretation and citing to the dictionary to interpret terms within an insurance contract); *Osage Tribe of Indians of Oklahoma v. U.S.*, 95 Fed. Cl. 469, 473 (2010) ("Taking judicial notice of

354 S.C. at 22, 579 S.E.2d at 336. In interpreting ordinance terms, South Carolina courts must construe terms in the context of the overall ordinance in which they are contained. *Id.* at 24, 579 S.E.2d at 337 ("Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. . . . Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction"). The usage of terms in an ordinance must be considered intentional. *Consumer Advocate for State v. S.C. Dept. of Ins*., 397 S.C. 599, 603, 725 S.E.2d 708, 710 (Ct. App. 2012) (finding that the undefined term "increase" did not mean "overall increase" because the legislature uses the phrase "overall increase" expressly elsewhere in the statute, and therefore the omission of "overall" must be presumed to be intentional); *see also S.C. Coastal Conservation League v. SCDHEC*, 380 S.C. 349 (S.C. 2008) (refusing to interpret an undefined term in a statute as synonymous with another term because the legislature expressly used that term in other sections of the statute, and holding that this showed the legislature was able to use that specific term if that is what it meant by the undefined term).

Town Council uses the specific term "Lodging Unit" within the ordinance at issue. Town Council uses the term "Lodging Unit" to determine what is, and what is not, a "boutique" hotel. (*See* § 156.007, R. p. 404–420.) For determining off-street parking, however, Town Council uses the term "Guest Room" and not "Lodging Unit." The circuit court erred in finding that the term "Guest Room" is synonymous with "Lodging Unit," where Town Council's intention that these terms do *not* have the same meaning is reflected in its decision to separately use both terms. In other words, Why would Town Council use the term "Guest Room" to mean "Lodging

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dictionaries and encyclopedias for definitions of terms used by parties and witnesses is a well-

Unit" when it could have easily used "Lodging Unit" directly as it did in other parts of the ordinance? Where Town Council has intentionally chosen to use both terms, they cannot be deemed synonymous.

D. The circuit court erred in its reliance on the proposition that "'[z]oning 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.'"[19]

The circuit court cited *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (Ct. App. 2015), among other cases, for the proposition that it was constrained to liberally construe the § 156.171 for the benefit of the property owner, CKC. (*See* R. p. 26 ("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.'").) By its plain terms, this proposition is inapplicable here, as it has to do with a situation where there is a question about a regulation over a "use" a property owner wishes to make of their property, such as for the purpose of a helicopter sightseeing business, as in *Helicopter Solutions*. Here, the question is not whether or not CKC may use the property for a hotel, only about the amount of off-street parking spaces such a use requires. And even assuming, *arguendo*, the proposition applied here, the circuit court ascribes too much significance to it. *See Purdy*, 223 S.C. at 302–05, 75 S.E.2d at 607–08 (recognizing that "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

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established practice that predates the Federal Rules of Evidence").

[19] (R. p. 26.)

scope and purpose" and that "the terms [of an ordinance] limiting the use of the property must be liberally construed for the benefit of the property owner" *but nonetheless* finding zoning board's "construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefor").

The principle of liberal construction for the benefit of the property owner must necessarily yield to "the intent of the legislature." *Georgia-Carolina Bail Bonds*, 354 S.C. at 22, 579 S.E.2d at 336 ("All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used."). Here, BOZA based its ruling on specific language in the ordinance at issue. BOZA concluded that Town Council's use of the term "Guest Room" and "Lodging Unit" within the same ordinance must be read that the two terms have different meanings. BOZA's interpretation of Guest Room as "bedroom" is based on Town Council's intent as ascertained from the language in the ordinance.

BOZA's interpretation is consistent with the overall purpose of the off-street parking requirements. *See Georgia-Carolina Bail Bonds*, 354 S.C. at 23, 579 S.E.2d at 336 ("[L]anguage must be construed in the light of the intended purpose of the statute"). Municipalities require off-street parking from developments to limit the burdens on public street parking. Requiring additional off-street parking for large multiple bedroom units is consistent with reducing the public street parking burdens. Requiring the same parking for one-bedroom hotel units as four-bedroom hotel units, as the circuit court has done, is plainly inconsistent with the purpose of the ordinance to limit on-street parking burdens.

Further, the notion that undefined terms must always be construed in favor of the property owner is incorrect. For example, in *Arkay, LLC v. City of Charleston*, 418 S.C. 86, 96, 791 S.E.2d 305, 311 (Ct. App. 2016), a private property owner wished to operate a horse carriage business out

of a portion of his building at 45 Pinkney Street in Charleston; however, the city's zoning ordinance prohibited "stables" within 100 feet of a residential district. *Id.* at 89, 791 S.E.2d at 307. The term "stable" was not defined in the city's zoning code, but this Court looked to the tourism code for guidance and found the "stable" meant the entire building located at 45 Pinkney, including the offices and other rooms in the building, and not just the portion of the back of the building where the horses would be kept. In doing so, the Court noted that "stable" and "stall" are different terms in the tourism ordinance; thus, the legislature must intend for those terms to have different meanings.

The *Arkay* Court thus interpreted the zoning restriction against a property owner because that was consistent with the intent of the legislature, even though that interpretation involved an undefined term. Moreover, *Arkay* is directly analogous to this case in that the legislative intent behind "Guest Room" was for it to mean "bedroom." This is clear through the common usage of "Guest Room" in dictionaries and through Town Council's specific differentiation between "Guest Room" and "Lodging Unit" within the same ordinance.

II. Even assuming, *arguendo*, that it did not err in reversing BOZA's determination that the Proposed Hotel does not meet the off-street parking space requirements in § 156.171, the circuit court erred in granting relief that exceeded its authority.

The circuit court purported to grant CKC the following improper relief:

> IT IS FURTHER ORDERED that . . . [t]he 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 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.

(R. p. 32 (emphasis added).)

The circuit court's role, however, was solely to determine whether BOZA's decision was correct as a matter of law. *See* S.C. Code § 6-29-840(A) (prescribing the circuit court's role in appeals from boards of zoning appeals: "In determining the questions presented by the appeal, the court must determine *only* whether the decision of the board is correct as a matter of law.") (emphasis added). The above relief goes beyond determining whether BOZA's decision was *correct as a matter of law*.

BOZA ruled ***only*** that the Proposed Hotel lacked sufficient off-street parking to comply with § 156.171, and the circuit court was limited to reversing only that decision. BOZA made no determinations concerning other non-BOZA design review approvals, vested rights, or final approval of a site-specific development plan. Nor could it, as BOZA has no power to direct other design review approvals to occur, to accord vested rights in a development project, or to approve a site-specific development plan. *See* S.C. Code Ann. § 6-29-800 (describing BOZA's powers). As such, a reversal of BOZA's decision could not result in the above relief. Such relief is perhaps awardable in a declaratory judgment action, but not in a zoning appeal.

Therefore, even assuming, *arguendo*, that it did not err in reversing BOZA's determination that the Proposed Hotel does not meet the off-street parking space requirements in § 156.171, the circuit court erred in granting relief that exceeded its authority.

CONCLUSION

For the foregoing reasons, Appellants ask this Honorable Court to reverse the circuit court entirely and reinstate BOZA's decision directly (or, alternatively, remand the matter to the

circuit court for it to affirm and reinstate BOZA's decision) or, alternatively, even assuming, *arguendo*, that the circuit court did not commit reversible in reversing BOZA's decision that the Proposed Hotel lacks the required amount of off-street parking spaces under § 156.171, this Court should reverse the circuit court as to its grant of the improper relief addressed in Issue/Argument II above.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

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Charleston, South Carolina

September 17, 2024

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Mount Pleasant, South Carolina

September 17, 2024

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Mikell R. Scarborough, Master-in-Equity

Case No. 2021-CP-10-05211
Appellate Case No. 2023-001615

CKC Properties, LLC, Respondent,

v.

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 Below,

Of which The Town of Mount Pleasant, South Carolina;
The Town of Mount Pleasant Board of Zoning Appeals;
Justin O'Toole Lucey; 415 Mill St., Inc.; and 69 Scott Street, LLC, are Appellants.

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Appellants' counsel hereby certify that the **Final Brief of Appellants** complies with Rule 211(b), SCACR, and the Supreme Court's order of April 15, 2014.

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Of which The Town of Mount Pleasant, South Carolina;
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Justin O'Toole Lucey; 415 Mill St., Inc.; and 69 Scott Street, LLC, are Appellants.

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I, Russell G. Hines, of Clement Rivers, LLP, hereby certify that the **FINAL BRIEF OF APPELLANTS** and **APPELLANTS' CERTIFICATION FOR FINAL BRIEF** were served on all other parties to this matter on September 17, 2024, by emailing (see attached email) a copy of the same to their counsel of record:

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Charleston, South Carolina

September 17, 2024

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Subject:	CKC v. Mt. Pleasant ; Appellate Case No. 2023-001615 (CR 210812)
Date:	Tuesday, September 17, 2024 4:29:01 PM
Attachments:	Final Brief of Appellants.pdf Final Reply Brief of Appellants.pdf Appellants" Certification for Final Brief.pdf Appellants" Certification for Final Reply Brief .pdf image001.png

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Enclosed please find Appellants' Final Brief, Final Reply Brief, and Certifications for service upon you in the above-referenced matter.

Thank you,

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