

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Patrick C. Fant III, Circuit Court Judge

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Appellate Case No.: 2024-001138

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**Jan 27 2025**

**S.C. SUPREME COURT**

The Altamont Road Safety Alliance, Sussane Beattie, Brenda Cale, Elaine Carter, Ron & Ava Chitty, Aaron & Heather Collins, Margaret & Robert Degiorgio, Elliot & Jennifer Earle, Laura Edge, Travis Elmore, Marilyn Endler, John Fields, Jim Hambright, Leah Hunter, Lauren Johnson, Cynthia Kinghorn, Alex Kiriakides, Jason Kraning, Elaine & Bill Landreth, Robert & Patricia Lanning, Frank & Barbara League, Louis & Ann Leblanc, Frank Lewkowicz, Forrest & Jane Long, George & Fain Mcdaniel, Brian Mcsharry, Ronald & Kathy Mercer, Steven & Anna Mickle, Helen & Fred Moorhead, John Parker, Audrey Pasin, Jim Sheets, Matthew Phillips, Shannon Pierce, Michael Rawls, Ronald & Tommie Reece, Daniel & Kimberly Rudzinski, Jason Seefafer, David Taylor, Ronald Trammel, Greg Valente, and Emily & Caleb Vanwingerden,

Appellants,

v.

Greenville County Board of Zoning Appeals,

Respondent.

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INITIAL BRIEF OF APPELLANTS

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND THE COUNTY FAILED TO COMPLY WITH THE ENABLING ACT?
2. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THE LEGISLATIVE INTENT OF THE GREENVILLE COUNTY ZONING ORDINANCE REQUIRES A PUBLIC HEARING FIRST?
3. DID THE TRIAL COURT ERR BY CONSIDERING AN ARGUMENT BY THE COUNTY THAT IT IS COMMON FOR ZONING PROCESSES AND PROCEDURES TO DIFFER BY JURISDICTION?

## STATEMENT OF THE CASE

This case raises novel and important issues of citizen applications for text amendments under the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Title 6, Chapter 29 (S.C. Code § 6-29-310 et. seq.) (Hereinafter referred to as “Enabling Act”), the impact of conflicting county ordinance provisions on the rights of private citizens to apply for text amendments under S.C. Code § 6-29-760 et. seq. and what variances from the Enabling Act are allowed, if any. This appeal also addresses what information the trial court can consider in making its decision on an appeal from the Board of Zoning Appeals under S.C. Code § 6-29-820 et. seq.

The Appellants of the Altamont Road Safety Alliance and the individual Appellants consist of a community of numerous residents who live on Paris Mountain. Located near the City of Greenville, South Carolina, Paris Mountain overlooks the campus of Furman University, portions of the Swamp Rabbit Trail and the City of Greenville. Paris Mountain is located several miles from and is not adjacent to or connected with the campus of Furman University or the Swamp Rabbit

Trail which are both within the corporate boundaries of the City of Travelers Rest. (Pl. Ex. D. p.29-33; Pl. Ex. H. p.166-168). Paris Mountain is also covered in part on its eastern side by the Paris Mountain State Park. Altamont Road is on the western side of Paris Mountain. (*Id.*)

The individual Appellants live on Altamont Road and the non-profit corporation they created is known as the Altamont Road Safety Alliance. One of Altamont Road Safety Alliance's dedicated purposes is to protect and improve the safety of Altamont Road and the environmentally sensitive nature of Paris Mountain, Greenville South Carolina. (Pl. Ex. D. p.111-112).

Altamont Road is a winding two-lane road maintained by the State of South Carolina traveling over Paris Mountain from Highway 253 to Highway 276. (Pl. Ex. D. p.112). This state road is a narrow mountainous road that traverses an area which is zoned by Greenville County as an "Environmentally Sensitive District – Paris Mountain" (ESD-PM) (Pl. Ex. H. p.167-168). Altamont Road is critical to the lives of the residents of over 300 homes and has been the site of numerous car accidents over the years. (Pl. Ex. I. p.169-176).

On July 6, 2023, Appellants petitioned for a text amendment to ESD-PM zoning district to prohibit a potential Paris Mountain State Park expansion from connecting to Altamont Drive through the Greenville Planning Staff, pointing out that the process for text amendments follows the same procedure as rezoning requests, as specified in S.C. Code § 6-29-760, including public hearings, first reading, staff review, and Planning Commission review before being considered by any County Council committee. (Pl. Ex. A. p.1-17).

On August 15, 2023, the Zoning Administrator for Greenville County notified the Appellants of his decision that their petition must first be presented to the Planning and Development Committee of County Council before a public hearing, first reading, staff review, and

Planning Commission review. (Pl. Ex. B. p.18-20). The Appellants appealed the Zoning Administrator's decision to the Board of Zoning Appeals (BZA), pursuant to S.C. Code § 6-29-800(A)(1). (Pl. Ex. C p.21-28). The BZA heard the appeal on October 11, 2023, and upheld the Zoning Administrator's decision. (Pl. Ex. E. p.141-147).

The Appellants appealed that decision to the Circuit Court on December 6, 2023, pursuant to S.C. Code § 6-29-820. On April 9, 2024, the Court of Common Pleas for the Thirteenth Circuit held a hearing regarding the Appellants appeal of the BZA decision (Order p.1). On June 11, 2024, the Court of Common Pleas for the Thirteenth Circuit upheld the BZA's decision to uphold the Zoning Administrator's decision. (Order p.9). Appellants filed a Motion to Alter/Amend or Reconsider on June 17, 2024, which was denied on June 28, 2024. (Motion; Order of June 28, 2024). Appellants duly appealed the Circuit Court Judge's orders to the South Carolina Supreme Court.

#### STANDARD OF REVIEW

This case presents an appeal from the Greenville County Board of Appeals and to the subsequent affirmation by the Circuit Court. When there are issues of construction of ordinances and statutory authority of the County such as those under the South Carolina Comprehensive Planning Act of 1994, the analysis initially involves the validity of the pertinent conflicting provisions of Greenville County ordinances, statutory construction of the State of South Carolina's enabling legislation and the propriety of the Circuit Court's consideration of certain arguments of the Respondent.

“[S]ection 6-29-840 [of the South Carolina Code] prescribes the standard of review a circuit court should apply when considering an appeal from a local zoning board.” *Austin v. Bd. of*

*Zoning Appeals*, 362 S.C. 29, 35, 606 S.E.2d 209, 212 (Ct. App. 2004).

“On appeal, we apply the same standard of review as the circuit court below.... In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [b]oard is correct as a matter of law.” *Id.* at 33, 606 S.E.2d at 211. “However, a decision of a municipal 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.* (quoting *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)).

Additionally, “[i]ssues 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.” *Eagle Container Co. v. Cty. of Newberry*, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008).

The cardinal rule of statutory construction is for the Court to ascertain and effectuate the intent of the legislature. *E.g.*, *Grant v. City of Folly Beach*, 346 S.C. 74, 551 S.E.2d 229 (2001). The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. *Charleston County Parks and Recreation Commission v. Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995); *City of Columbia v. Niagara Insurance Co.*, 249 S.C. 388, 154 S.E.2d 674 (1967). The determination of legislative intent is a matter of law. 73 Am.Jur.2d § 142 (1974); *Charleston County PRC v. Somers, supra*.

It is well settled that when interpreting an ordinance or act, legislative intent must prevail if it can be reasonably discovered in the language used. *Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach*, 294 S.C. 475, 366 S.E.2d 15 (Ct. App. 1988). An ordinance or act must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.

*Spartanburg Co. D.S.S. v. Little*, 309 S.C. 122, 420 S.E.2d 499 (1992). In construing ordinances or acts, the terms used must be taken in their ordinary and popular meaning. *Citizens for Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992).

Where the terms of a statute are clear and unambiguous, the Court must apply those terms according to their literal meaning. *Paschal v. State Election Commission*, 317 S.C. 434, 454 S.E.2d 890 (1995). Use of the word “shall” in a statute generally connotes mandatory compliance. *S.C. Dept. of Highways and Public Transp. v. Dickinson*, 288 S.C. 189, 341 S.E.2d 134 (1986). Furthermore, the word “duty” is defined as “[l]egal or moral obligation. Obligatory conduct or service. Mandatory obligation to perform.” Black's Law Dictionary 505 (6th ed. 1990).

However, it is also important to note that, “The canon of construction ‘expressio unius est exclusio alterius’ or ‘inclusio unius est exclusio alterius’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’” *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000). As explained in *Hodges v. Rainey*: “The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed.” *Id.* at 87, 533 S.E.2d at 582 (quoting Norman J. Singer, *Sutherland Statutory Construction* § 47.23 at 227 (5th ed.1992)).

If the Respondent argues that the County is free to vary from The Enabling Act, according to *Wilson ex rel. State v. City of Columbia*, “Resolving a conflict between state law and [a local government ordinance] also invokes the principle of preemption.” *Id.* 434 S.C. 206, 218, 863 S.E.2d 456, 462 (2021).

“Under implied preemption, an ordinance is preempted when the state statutory scheme so

thoroughly and pervasively covers the subject so as to occupy the field or when the subject mandates statewide uniformity.” *South Carolina State Ports Auth. v. Jasper County*, 368 S.C. 388, 397, 629 S.E.2d 624, 628 (2006).

#### STATEMENT OF THE FACTS

The Environmentally Sensitive District – Paris Mountain (“ESD-PM”) was adopted as a text amendment to the Greenville County Zoning Ordinance on November 15, 1988. (Pl. Ex. F. p.148-164). “The purpose of this district is to establish a land use pattern to protect the environmentally sensitive nature of Paris Mountain by encouraging the proper and safe placement of structures in conformance with the natural landform, landscape, and existing plant life.” (Greenville County Zoning Ordinance § 8:4.1). Section 8:5.9 of the Zoning Ordinance states:

At any time that a property owner can demonstrate that the property can be developed by providing vehicular access from *another source and not utilizing Altamont Road*, the property will be removed from the ESD-P.M. classification and will revert back to the original zoning. *The development must maintain the required setbacks from Altamont Road as buffer zones, and along the frontage of Altamont Road there shall be no points of ingress or egress.*

Greenville County Zoning Ordinance § 8:5.9 (*emphasis added*).

Accordingly, it appears that Greenville County Council determined that Altamont Road’s relationship to the ESD-PM district was of such importance that once a property in the district no longer has access to Altamont Road it will be removed from the ESD-PM district.

Paris Mountain State Park is not in the ESD-PM district and it is zoned as R-S residential suburban. (Pl. Ex. G. p.165-166). There are also no roads directly connecting Paris Mountain State Park to Altamont Road, but the new purchases by the private nonprofit that will be conveyed to the South Carolina Department of Parks Recreation and Tourism (“SCPRT”) extensively adjoin Altamont Road. (Pl. Ex. G. p.165-166).

The Appellants' earlier involvement in County Council actions, motives for their requests, the reasonable basis of their concerns and earlier actions by Greenville County are not likely essential to this appeal but they help explain the legitimacy of the Appellants' application for a text amendment to limit access to Altamont Road in their zoning designation and the dangers that are embodied in the trial court and BZA decision's.

In 2021, the Greenville County Historic and Natural Resources Trust ("HNRT"), a political subdivision of Greenville County Government, received an application for funding for a project initially identified as "Project 13". (Pl. Ex. D. p.44). The application was approved in 2022 with funding from various sources, including the South Carolina Conservation Bank with \$400,000.00 from Greenville County. (Pl. Ex. J. p.177-179). The project was later only identified as "Project Legacy", later as "HNRT Project Legacy", "Hughes Project", "Hughes" and much later "Shiloh Ridge at Paris Mountain Project". The funding application was approved on August 29, 2022, by the HNRT. (Pl. Ex. J. p.177-179).

The Appellants became aware of this plan when the funding ordinance was introduced in the fall of 2022. (Pl. Ex. K. p.181-187). The references by the State Park representatives about connections by the project to other parts of Paris Mountain made the citizens concerned about the public flooding onto Altamont Road from the one of the State's most popular park. (Pl. Ex. N. p.199 - 200). The project information provided by the SCPRT was:

Hughes will provide SCPRT with visitation capacity, *new access* and safe locations for *parking* in one of the most popular parks in the state. By Broadening the boundaries of the Park and *creating new connections to parking areas* that link the ridgelines, waterfalls, rivers and forest of Paris Mountain *we can expand public access to Furman University, the Swamp Rabbit Trail, and across the 'Necklace' of greenspace around Greenville.*"

Pl. Ex. N. p.199-200 (*emphasis added*).

The project sponsors refused to commit to guaranteeing that the park expansion would not connect to Altamont Road, a stance they maintain, as evidenced by an email sent to County Council warning against limiting access to the park expansion. (Pl. Ex. O. p.201-202).

On September 12, 2022, the Greenville County Finance Committee after going into executive session to “discuss contractual matter”, the Committee recommended an ordinance authorizing the funding for a project then identified as “HNRT Project Legacy”. (Pl. Ex. K. p.180-187).

On September 20, 2022, Greenville County Council considered an ordinance at first reading to authorize the HNRT to provide funding for the “Shiloh Ridge at Paris Mountain Project” (Pl. Ex. L. p.188-196).

On October 4, 2022, a public hearing was held by Greenville County Council “For the purpose of receiving comments from the public regarding an ordinance authorizing the Greenville County Historic and Natural Resources Trust (HNRT) to provide funding in the amount of \$400,000.00 for the Shiloh Ridge at Paris Mountain Project.” (Pl. Ex. M. p.197-198).

Although, the Appellants supported the planned expansion of Paris Mountain State Park, public discussions and stated plans by the SCPRT raised significant concern that the expansion would likely increase traffic on Altamont Road and a significant rise in hiking, biking, parking, and vehicular travel associated with the expansion. (Pl. Ex. N. p.200). The Appellants believed that if the Park gains access to Altamont Road for park entrances or exits along with additional parking there will also be inevitable connections across Altamont Road to future trails, the Furman Campus, and the Swamp Rabbit Trail destroying the sensitive nature of the area and posing hazards to residents and the traveling public.

As a result of Appellants' concerns, Greenville County Councilor Steve Shaw ("Councilor Shaw"), representing Greenville County District 20, which encompasses Paris Mountain and Altamont Road, introduced a resolution to address traffic issues likely to arise from this addition to Paris Mountain State Park. (Pl. Ex. Q p.17-218). This resolution was unanimously approved by Greenville County Council, however, an attempt to amend the project ordinance to prohibit access to Altamont Road was denied. (Pl. Ex. V. p.276-277).

On December 6, 2022, Councilor Shaw subsequently requested that Greenville County Council consider a proposed ordinance for a text amendment to the Zoning Ordinance for the ESD-PM zoning district which would prohibit vehicular access to Paris Mountain State Park through Altamont Road. (Pl. Ex. R. p.219-236). The proposed ordinance was then referred by the Chairman to the Planning and Development Committee.

Councilor Shaw's proposed ordinance was never submitted to a public hearing, reviewed by staff, or reviewed by the Planning Commission. It was never given a zoning docket number. Additionally, it was never placed on the Planning and Development Committee's agenda, nor was ever considered or reported out by the committee. Despite a Greenville County Council rule that matters be "reported to full council in a timely manner." pursuant to Greenville County Council Rule (V)(F)(2). (Pl. Ex. V. p.276-277), it went nowhere and secretly died somewhere between the County Council and the Planning and Development Committee.

In a similar effort, Councilor Shaw previously attempted to address the traffic issues on Altamont Road by introducing a Conservation Easement Ordinance on November 15, 2022. (Pl. Ex. V. p.276-277). On March 14, 2023, Councilor Shaw requested that his measures be taken up, citing Greenville County Council Rule (V)(F)(2) which requires that "All zoning matters properly

referred to Planning and Development Committee must be reported to full Council in a timely manner with a recommendation for approval, denial, approval as modified, or ‘no recommendation.’” (Pl. Ex. V. p.276-277).

Eventually, the citizens were convinced that the Chairman of the Planning and Development Committee would not place any of Councilors Shaw’s proposals on the agenda. The Chairman of the Planning and Development Committee dismissed Councilor Shaw’s text amendment without a vote or consideration by a cross-section of the community.

Appellants were aware that Title 6 (S.C. Code § 6-29-310 et seq.) does not differentiate between text amendments and rezoning requests. An individual member of the association who is also an individual Appellant in this appeal, initially requested for the County Attorney to advise him on whether private citizens could file for text amendments. The request stated:

The South Carolina Association of Counties Guide to Land Use Planning for South Carolina includes an application for a zoning text amendment by the property owner (on page 109 of the Guide, Page 115 of the linked PDF).

Can you please tell us if Greenville County codes/regulations allow for a citizen-initiated zoning text amendment using this same application? And, if not, is there another application or procedure by which Greenville County residents can propose a zoning text amendment?

Pl. Ex. S p.238 (*See also*, South Carolina Association of Counties, Guide to Land Use Planning for South Carolina (2017 Ed.), <https://www.sccounties.org/guide-land-use-planning>).

In response, the County Attorney stated that:

No, the current Greenville County Zoning Ordinance (GCZO) does not include the text amendment application process you have referenced.

For the GCZO to provide a citizen initiation process like you have inquired about, a text amendment would need to be adopted by County Council to provide a new process.

Pl. Ex. S p.238.

Strongly disagreeing with the County Attorney's position, Appellants filed a petition with the Planning Commission Staff for a text amendment to allow full Council the opportunity to consider the issue, rather than the chairman of a committee. (Pl. Ex. S. p.237-240). On July 7, 2023, the Applicants filed their petition for the text amendment citing 3:2.1, 3:2.2, 3:2.3, 3:2.4, 3:2.6, and 3:2.7, of the Zoning Ordinance, as well as state law provisions requiring that the process of rezoning requests and text amendments to follow the exact same procedures.

In Greenville County's case this process involves the applicant submitting a request to the Planning Commission Staff, a legal ad being published in the paper for a public hearing before County Council, a public hearing being held before County Council, the Planning Staff reporting an analysis and recommendation, the Planning Commission reviewing the Planning Department report and the Planning and Development Commission making a recommendation to the Planning and Development Committee, which, in turn, reports its recommendation to County Council. (Pl. Ex. T. p.241)

The Appellants were advised by the Zoning Administrator that they were required to go through the Planning and Development Committee first, the same committee that never heard Councilor Shaw's text amendment. (Pl. Ex. U. p.272-275). The Appellants then appealed to the Board of Zoning Appeals contending that they had the right to pursue the same process as rezoning requests. (Pl. Ex. C p.21-28).

A hearing was held on October 11, 2023, before the Board of Zoning Appeals. The Appellants argued that the process established by the Enabling Act, must involve the Planning Commission and public hearings, not merely review by a council committee first. (Pl. Brief p.9-

16). They also argued that the conflicting provisions of the Zoning Ordinance must be construed to allow this process. The Board rejected the appeal, and the Appellants appealed to Circuit Court, asserting that the BZA's decision was arbitrary, capricious, and an abuse of discretion, violating procedural and substantive due process requirements. (Pl. Brief p.11).

On December 6, 2023, the Appellants appealed the decision of the Greenville County Board of Zoning Appeals, arguing that the requirement for text amendments to first be reviewed by the Planning and Development Committee conflicts with other sections of the Zoning Ordinance and state law, which do not distinguish between text amendments and map amendments. Specifically, they contended that S.C. Code § 6-29-780 and S.C. Code § 6-29-760 of the Comprehensive Planning Act provides for the appropriate process. (Pl. Brief p.8-12).

On April 9, 2024, the Court of Common Pleas for the Thirteenth Circuit held a hearing regarding the Appellants' appeal of the BZA decision. (Order p.1). Both parties presented their arguments, with the Plaintiffs noting two important points: (1) the Enabling Act does not provide any distinction between text amendments and rezoning requests (Tx. p.21, 1.8-1.22) and (2) that the Planning Commission is given no more than thirty (30) days to submit its recommendation on either a rezoning application or a text amendment. (Tx. p.11, 1.3-1.6). Upon conclusion of the hearing, the Honorable Judge Patrick Fant took the matter under advisement. (Tx. p.23, 1.11-1.12).

On June 11, 2024, the Court of Common Pleas for the Thirteenth Circuit upheld the BZA's interpretation. The Court found that, "In fact, based on the Court's review, there is no state law that authorizes or prohibits or addresses in any respect a citizen-initiated text amendment request." (Order p.4). The Court also stated that zoning processes differ by jurisdiction and that the Home Rule allows for these differences. (Order p.5 n.2).

The Court of Common Pleas asserted that, “S.C. Code Ann. § 6-29-760 only requires that ‘[n]o change in or departure from the text or maps’ be made unless it is first presented to the planning commission; however, the timing of planning commission involvement is left to the local body to determine and establish by ordinance.” (Order p.5).

The Court of Common Pleas also claimed that “the Petitioners do not reference any provision in the Planning Enabling Act that addresses citizen-initiated text amendment requests.” (Order p.4).

The Appellants filed a Motion to Alter/Amend or Reconsider outlining this litany of errors made by the Trial Court and were denied. (Motion; Order of June 28, 2024). Appellants duly appealed the Circuit Court Judge’s orders to this Court, and we address the errors by the Circuit Court below.

## ARGUMENTS

### I. THE TRIAL COURT ERRED BY NOT FINDING THAT THE COUNTY FAILED TO COMPLY WITH THE ENABLING ACT.

Under Title 6, “[z]oning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare.” S.C. Code Ann. § 6-29-710(A) (Supp.1998). Goals include the prevention of overcrowding of people, buildings, and traffic; the preservation of historic and ecologically sensitive areas; and the adequate provision of services to residents. *Id.*

“Determining whether a local ordinance is valid is a two-step process. The first step is to determine whether the [county] had the power to adopt the ordinance. If no power existed, the ordinance is invalid. If the [county] had the power to enact the ordinance, the second step is to

determine whether the ordinance is consistent with the Constitution and general law of the State.” *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000); accord *Diamonds v. Greenville County*, 325 S.C. 154, 156, 480 S.E.2d 718, 719 (1997) (discussing analysis of validity of county ordinances). Zoning ordinances may not override state law and policy; enabling legislation is not merely precatory but prescribes the parameters of conferred authority. *Holler v. Ellisor*, 259 S.C. 283, 191 S.E.2d 509 (1972); 101 C.J.S. Zoning § 17 p.713. A Zoning Ordinance is void to the extent that it is repugnant to the general law. *Holler v. Ellisor, supra*; *Law v. City of Spartanburg*, 148 S.C. 229, 146 S.E. 12 (1928). *Bostic v. City of West Columbia*, 268 S.C. 386, 234 S.E.2d 224 (1977).

The “South Carolina Local Government Comprehensive Planning and Enabling Act of 1994” repealed existing zoning and planning provisions in Title 5 and Title 6 as of May 3, 1999. Act No. 355, 1994 Acts 4010. The 1994 Act combined the provisions into a single, comprehensive set of provisions available to local governments. S.C. Code Ann. §§ 6-29-710 to 6-29-960 (Supp. 1998).

Zoning regulations must address numerous factors, including building size, density of development, parking, and buffer areas. A local governing body may use a variety of zoning techniques, including planned development districts such as the one at issue in this case. S.C. Code Ann. § 6-29-720 and 740 (Supp. 1998). However, the local planning commission or governing body must hold a public hearing before enacting or amending zoning regulations or maps and must follow detailed procedures in conducting that hearing. S.C. Code Ann. § 6-29-760(A) (Supp. 1998). *See also I'ON, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

The Legislature has recognized through its enactment of detailed procedures in Title 6, that

haphazard or thoughtless decisions are the antithesis of meaningful zoning. The Legislature has not condoned, nor should we approve, a process by which interested citizens are dealt with differently. Such a system could ultimately nullify a carefully established zoning system or master plan, developed after debate among many interested persons and entities, resulting in arbitrary decisions and patchwork zoning with little rhyme or reason. *I'ON, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

Because the County had the authority to enact its ordinance, the court next must examine whether the ordinance is consistent with State law.

Where an ordinance is not preempted by State law, the ordinance is valid if there is no conflict with State law. In order for there to be a conflict between a State law and a municipal ordinance, both must contain either express or implied conditions that are inconsistent and irreconcilable with each other. If either is silent where the other speaks, there is no conflict.

*McKeown v. Charleston County BZA*, 347 S.C. 203, 553 S.E.2d 484 (Ct. App. 2001) (citations omitted).

Thus, the ordinance provisions at issue here can be sustained only if its variance from state law under the Enabling Act is authorized and if the State has not preempted the County's ability to add or delete from the Enabling Act except where it is specially allowed to do so.

The only variations allowed from the Enabling Act are; the planning commission can be county, joint city, county, or a consolidated government planning commission (S.C. Code § 6-29-310); planning commission membership must be no less than five or more than twelve members. (S.C. Code § 6-29-350); the planning commission may adopt its own rules (S.C. Code § 6-29-360); advisory committees to the planning commission are optional (S.C. Code § 6-29-520); adoption of a zoning ordinance is optional (S.C. Code § 6-29-720); amendments to the zoning regulations or

maps require a public hearing held by either the Planning Commission or Council (S.C. Code § 6-29-760); if no procedure exist, then there must at least 15 days' notice of the public hearing but more can be provided (S.C. Code § 6-29-760(A)); the Planning Commission report to Council can be sooner but not later than 30 days from the zoning request (S.C. Code § 6-29-760(B)); there are options for non-conforming uses (S.C. Code § 6-29-730); Board of Zoning Appeals can have no less than 3 nor more than 9 members (S.C. Code 6-29-780) and an Architectural Review Committee is optional (S.C. Code § 6-29-870).

Indeed, the Enabling Act allows quite a few variances, but not the one the County supports. There is no variance specified in statute to allow for a different mechanism for a text amendment rather than the process provided for a rezoning request.

Additionally, the 3:2.3, clearly conflicts with S.C. Code § 6-29-760, as it provides:

(A) Before enacting or *amending any zoning regulations* or maps, the governing authority or *the planning commission*, if authorized by the governing authority, *shall hold a public hearing on it*, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. . . *No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation.* The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. *If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure.*

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

S.C. Code Ann. § 6-29-760 (*emphasis added*).

The Court of Common Pleas asserted that, “S.C. Code Ann. § 6-29-760 only requires that ‘[n]o change in or departure from the text or maps’ be made unless it is first presented to the planning commission; however, the timing of planning commission involvement is left to the local body to determine and establish by ordinance.” (Order p.5).

That is incorrect. The record and statute do not support this assertion by the Trial Court.

S.C. Code § 6-29-370 requires a report by the planning commission before final action may be taken as follows:

The governing authority may provide for the reference of any matters or class of matters to the local planning commission, with the provision that *final action on it may not be taken until the planning commission has submitted a report on it or has had a reasonable period of time, as determined by the governing authority to submit a report.*

S.C. Code Ann. § 6-29-370 (*emphasis added*).

Specifically, Appellants argued this to the Trial Court:

MR. CHILDS: ...The Planning Commission shall have a time prescribed in the ordinance which may not be more than 30 days within which to submit its report and recommendation on the change to the governing authority

Tx. p.11, 1.3-1.6

Not only was the trial court incorrect about 3:2.3, but the remainder of 3:2.3 contains extensive rezoning provisions by referendum which this Court found unlawful in *I’ON, LLC v. Town of Mt. Pleasant*, when it stated, “the Title 6 provisions in 1994 address the matter of zoning in detail. We conclude the legislature intended for this more specific and more recent enactment to take precedence.” *Id.*, 338 S.C. 406, 526 S.E.2d 716 (2000).

The Trial Court also stated that “the Petitioners do not reference any provision in the Planning Enabling Act that addresses citizen-initiated text amendment requests.” (Order p.4).

Contrary to this claim, Petitioners have unequivocally demonstrated that S.C. Code § 6-29-760 discusses and expressly allows citizen-based text amendments just as it does for rezoning requests. The Petitioners further emphasized that the entirety of state law addresses citizen-initiated text amendment requests.

Furthermore, S.C. Code § 6-29-760 actually provides no change in the texts recommended by the local board may be made unless it is *first submitted to the planning commission* as follows:

Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. . . *No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure.*

S.C. Code Ann. § 6-29-760 (*emphasis added*).

Based upon the foregoing, it is clear that the Legislature encourages the ability of citizens to participate fully in the zoning process. Affected citizens, along with the public must be notified a when either a rezoning request or a text amendment is initiated. The idea that affected citizens should be silenced by going through a committee that has already failed to take action on a similar text amendment is contrary to that intent and is based on a solitary ordinance provision that clearly conflicts with the Enabling Act. The process for text amendment requests, like those for rezoning requests, requires a public hearing, staff review, planning commission review, and a planning commission report before the Greenville County Council becomes involved. The State process

does not allow a committee to screen requests for text amendments and then dismiss the request by taking no further action.

II. THE TRIAL COURT ERRED IN FAILING TO FIND THAT THE LEGISLATIVE INTENT OF THE GREENVILLE COUNTY ZONING ORDINANCE REQUIRES A PUBLIC HEARING FIRST.

The determination by the Zoning Administrator that the process for private text amendment requests required going before the Planning and Development Committee first was based upon a single solitary county ordinance section that remained unaddressed by large scale amendments to the Zoning Ordinance in 2012. (County of Greenville Council Minutes August 24 (2012)). Those older provisions that were amended by this action had previously stated that certain requests initially go to the “Public Service, Planning and Development Committee.” The last mention of the “Public Service, Planning and Development Committee” in the minutes of Greenville County Council was March 1, 2011. (County of Greenville Council Minutes, March 1 (2011)).

Aside from the one antiquated section, the Greenville County Zoning Ordinance contains multiple sections that support the idea of a consistent process for both text and map amendments. These provisions collectively indicate that text amendments should not be treated differently from map amendments. Treating text amendments differently could lead to inconsistencies and potential biases in the zoning process. By ensuring that all amendments go through the same rigorous review process, the County can maintain fairness and transparency like the legislature intended.

In *Eagle Container v. County of Newberry*, 379 S.C. 564, 666 S.E.2d 892 (2008) the Supreme Court also analyzed conflicting provisions of the Newberry County Zoning Ordinance using the following analysis of statutes and applying that to Ordinances. It stated:

We proceed from the familiar premise that in the area of statutory construction, our

role is limited to determining legislative intent and effectuating that intent. “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, and that language must be construed in light of the intended purpose of the statute.”

“[W]ords in a statute must be construed in context,” and “the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute.” “The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” “If a statute’s language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.”

*Id.* at 570-71, 666 S.E.2d at 895-96 (citations omitted).

Both State statutory law, as stated above in Issue One above, and the Greenville County Zoning Ordinance provide that the requirements of rezoning and text amendments follow the exact same process of public hearing first, then the Planning Commission and so on.

“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, and that language must be construed in the light of the intended purpose of the statute.” *McClanahan v. Richland County Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). “In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.” *Mid-State Auto Auction v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). “In construing a statute, the court looks to the language as a whole in light of its manifest purpose.” *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 231, 612 S.E.2d 719, 724 (Ct. App. 2005). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of the words.” *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992) (citations omitted).

“However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention.” *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). “The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” *Municipal Ass'n of South Carolina v. AT&T Communications of S. States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004) (internal quotation marks omitted).

This Court must, and the Trial Court should have, interpreted the amending ordinance in light of other relevant sections contained in the Zoning Ordinance. “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.” *Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302. “A subsequent statutory amendment may be interpreted as clarifying original legislative intent.” *Stuckey v. State Budget and Control Board*, 339 S.C. 397, 401, 529 S.E.2d 706, 708 (2000).

However, “[i]t will be presumed that the Legislature in adopting an amendment to a statute intended to make some change in the existing law.” *Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 155, 135 S.E.2d 841, 844 (1964). “The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.” *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002).

In the present case the amendatory provisions referencing only the Planning and Development Committee and the process recognized by the Enabling Act (Public Hearing first, Planning Commission review, Staff reports and Planning Commission reports are produced and

then submitted to the Planning and Development Committee) along with the fact that the section that remained unamended refers to zoning by referendum which was outlawed in *I'ON, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). This clarifies Council's intent to no longer follow the antiquated procedure referring the subject to an antiquated non-existent committee that hasn't been mentioned in the minutes of County Council since 2012.

Further these amendments in 2012 were the last expression of Council's intent. "Under the last legislative expression rule, where conflicting provisions exist, the last in point of time or order of arrangement, prevails." *Ramsey v. County of McCormick*, 306 S.C. 393, 397, 412 S.E.2d 408, 410 (1991) (internal quotation marks omitted). "In accordance with the principle that the last expression of the legislative will is the law, where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails." *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 51, 26 S.E.2d 22, 24 (1943). "[L]ater legislation supersedes earlier laws addressing the identical issue." *Whiteside v. Cherokee Sch. Dist. No. One*, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993).

Admittedly, "[the last legislative expression rule] is purely an arbitrary rule of construction and is to be resorted to only when there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted." *Feldman*, 203 S.C. at 54, 26 S.E.2d at 24. However, "the Last Legislative Expression Rule requires that in instances where it is not possible to harmonize two sections of a statute, the later legislation supersedes the earlier enactment." *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993).

Therefore, it is clear there is an irreconcilable conflict within the Zoning Ordinance. §3:2 of the Ordinance is entitled "Text and Map Amendments" and §3:2.1 states "An application for any

change or amendment to the text and map...must be filed with the Greenville County Planning Commission Staff in accordance with the published schedule of the rezoning deadline and meeting dates.” (Greenville County Zoning Ordinance § 3:2.1). This conflicts with §3:2.3 “Petitions for text changes and amendments . . .must first be presented to the Public Service, Planning and Development Committee of County Council.” (Greenville County Zoning Ordinance § 3:2.3).

§ 3:2.1 of the Ordinance also states, “Upon receipt of a complete application from the Planning Commission staff for an amendment to the Zoning Ordinance *text or map*, the request shall be place on the agenda at the next scheduled public hearing.” (Greenville County Zoning Ordinance § 3:2.1). This conflicts with §3:2.3 that states “Petitions for text changes and amendments. . .must first be presented to the Public Service, Planning and Development Committee of County Council.” (Greenville County Zoning Ordinance § 3:2.3) (*emphasis added*).

§ 3:2.6 of the Ordinance states “The Planning staff shall, upon receipt of a request for an amendment to the Zoning Ordinance *text or map*, review and make written recommendations to the Greenville County Planning Commission concerning the request. The Planning Commission shall have 30 days to submit its report and recommendation to County Council.” (Greenville County Zoning Ordinance § 3:2.6) (*emphasis added*). This conflicts with § 3:2.3 as well.

§ 3:2.7 of the Ordinance states “The Planning and Development Committee *shall consider the information presented at the public hearing and the staff review and recommendation received from the Greenville County Planning Commission before* making a recommendation to County Council. In its recommendation, the Planning Commission may request an additional comment session. The Planning and Development Committee may *return the zoning docket to the Planning Commission* and require additional public comment session on the zoning docket on the

Committee’s determination or based upon the request by the Planning Commission for comment purposes, the public comment session shall be held at the next regularly scheduled meeting of the *Planning Commission.*” (Greenville County Zoning Ordinance § 3:2.7) (*emphasis added*). This conflicts with §3:2.3 as well.

Table 3.1 of the Zoning Ordinance contains a schedule of rezoning fees. Among the rezoning fees for various districts based upon the acreage, is a category for text amendments and the amount is listed as \$100.00. (Greenville County Zoning Ordinance § 3:2.10). This conflicts with §3:2.3, as this is the same table for rezoning requests confirming that these sections require the same process for text amendment as rezoning requests.

Further conflicts ensue with the schedule referred to in Zoning Ordinance § 3:2.1, published by Greenville County as a calendar which is better described and shown in the “Active County Zoning Dockets as of 8/01/23”. (Pl. Ex. D p.125). Examining two text amendments on that docket under CZ-2023-044 and CZ-2023-045, a public hearing for both was held on June 19, 2023, and the first reading occurred on June 20, 2023. There was no vote by Council at first reading. Staff made a recommendation, and The Planning Commission met and recommended approval of those applications on June 28, 2023. Those dockets were not heard by the Planning and Development Committee until July 1, 2023.

The second readings for CZ-2023-044 and CZ-2023-045 were on August 15, 2023, and a third reading as on September 5, 2023. If the Court looks at CZ-2023-041 for 6501 White Horse Road. the rezoning requests, they go through the exact same procedure. A Public hearing, first reading, then a staff recommendation, then planning commission meeting and recommendation, and then the Planning and Development Committee and the rest of the readings. That same zoning

docket CZ-2023-044 goes on to show that the Planning Staff drafted an ordinance that went on the Council's agenda consent items on May 16, 2023. A public hearing was held on June 19, 2023, followed by first reading the next day, then to the staff recommendations, planning commission meeting and recommendation and only after that did it go to the Planning and Development Committee. (Pl. Ex. D. p.126).

Therefore, it is apparent that § 3:2.3 of the Zoning Ordinance conflicts with several other sections that describe a completely different process, which actually complies with the Enabling Act. Of course, State law makes no distinction between the process for rezoning and text amendments and requires an application to planning, a public hearing, staff report, commission review, commission report and only after those then a review by a council committee or a council staff.

It is well settled that when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used. *Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach*, 294 S.C. 475, 366 S.E.2d 15 (Ct. App. 1988). An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. *Spartanburg Co. D.S.S. v. Little*, 309 S.C. 122, 420 S.E.2d 499 (1992). In construing ordinances, the terms used must be taken in their ordinary and popular meaning. *Citizens for Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992).

It is clear when analyzing the conflicting ordinance provisions, in conjunction with the Enabling Act, that the Planning and Development Committee was never intended to be the first stop on the "Zoning Tour" that citizens must follow.

County Council has discretion over how it processes its members' requests. While it is

reasonable that a single Council member should not have the power to trigger a public hearing, staff report, planning commission meeting and recommendation or a planning commission report being send to. the Committee, as they represent only one voice within the broader Council as a body politic. It is unlawful to require citizens requesting a text amendment to be forced to go through a Council committee of undetermined identity while in contrast, citizens who petition for a rezoning have their petitions sent directly to the Planning Commission where they are automatically afforded a public hearing, staff report, and planning commission meeting and recommendation.

Under the Trial Court’s interpretation, the Committee can either take no action or deny the request, preventing it from ever reaching the Planning commission at all and never having a public hearing. The wording of a zoning ordinance is just as important as the zoning map as it directly affects how the zoning will be applied to a particular parcel of land.

As stated above, Greenville County Ordinance Sections 3:2.7, 3:2.6, 3:2.5, and 3:2.4 amended in 2012 by Am. Ord. 4500, § 1 are all the latest expressions of County Council’s intent. They serve to reflect the County Council’s intent to comply with the Enabling Act. This decision by the Greenville County Zoning Board does not reflect this intent in addition to violating the Enabling Act.

These 2012 amendments to the zoning ordinance clarify County Council’s intent regarding text amendments, by consistently referring to matters going to the Planning Commission when filing, having a public hearing first, receiving the recommendation of the Planning Commission within 30 days, the schedule of rezoning and text amendment requests and references to the “Planning and Development Committee” instead of the “Public Service, Planning and

Development Committee” of Greenville County Council.

These amendments and their references to “text or map” and public hearing first, effectively repeal the reference to a committee that no longer exists in favor of the procedures set forth in the other sections. As Petitioners pointed out at the hearing:

MR. CHILDS: So there is no distinction under the law for a text amendment or map amendment. The County Council has designated numerous provisions that agree with that proposition except one which says, again, The Amendments by any interested in property owner a resident of Greenville County must first be presented to the Public Service Planning and Development Committee. You’ll not see a reference to that name anywhere else in the ordinance. I’m kind of puzzled how that stuck in there and it’s still there. I’ve kind of tried to go look back and see when they amended it and I think that they amended some of it in 2012, they skipped right over that section.

Tx. p.11-12, 1.25-1.11

Therefore, employing the last legislative expression rule also leads to the conclusion that any text amendment proposed by a citizen must first go to a public hearing, then a staff report, then a Planning Commission review, and only then to the Planning and Development Committee and then to County Council. That is the only fair reading of the ordinance sections together. Certainly, an application for text amendment to the zoning ordinance by those in the ESD-PM district should be treated no differently than a rezoning request by them.

The Court should correct the trial court’s error about legislative intent by Council as it is wholly unsupported by the law and the facts. The clear intent of both the State Legislature and County Council is that private text amendments go through the same process as the rezoning requests.

III. THE TRIAL COURT ERRED IN ITS DECISION TO CONSIDER AN ARGUMENT BY THE COUNTY THAT IT IS COMMON FOR ZONING PROCESSES AND PROCEDURES TO DIFFER BY JURISDICTION

The trial court erred in concluding that zoning processes and procedures commonly differ from jurisdiction to jurisdiction which the Court states to support its finding that the Enabling Act does not establish or provide for a set of mandated procedures. While it is true that the General Assembly, consistent with the principles of home rule, grants municipalities and counties the authority to develop their own zoning schemes this does not necessarily mean that such differences are widespread or significant. The South Carolina Constitution mandates the home rule for local governments, allowing them to enact regulations necessary for their security, general welfare, and convenience, provided these regulations are not inconsistent with the Constitution and general law of the state. *Wilson ex rel. v. City of Columbia*, 434 S.C. 206, 217, 863 S.E.2d 456, 461-62 (S.C. 2021).

Furthermore, the Trial Court's finding lacks evidentiary support. S.C. Code Ann. 6-29-840(A) provides a circuit court may not take additional evidence. *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). No evidence was presented to substantiate the claim that zoning processes and procedures commonly differ across jurisdictions.

Therefore, the Trial Court's finding that zoning processes and procedures commonly differ from jurisdiction to jurisdiction is unsupported by the evidence and inconsistent with the legal framework established by the General Assembly. The decision should be reversed on these grounds as well.

## CONCLUSION

Legislature explicitly allows citizens to fully participate in the zoning process, requiring the affected individuals be notified, along with the public, when a rezoning request or text amendment is initiated. The idea that citizens should be silenced by being forced through a committee of

county council that has already taken no action on a similar amendment contradicts this intent. The process for text amendment requests, like those for rezoning requests, requires review by the planning commission staff, a public hearing, a staff report, planning commission review, planning commission report, review by Council committee, and then full council consideration for all applications. This process does not permit a committee to filter out text amendment requests by taking no action.

The Greenville County Planning and Development Committee does not represent a “cross-section of unbiased officials” and fails to “ensure due process for all interested parties.” As required by *I’ON*. While the Appellants appreciate the County’s willingness to acknowledge this right after they initially claimed only Council, or a County Department could apply for a text amendment, the Appellants are no different from others requesting a zoning change and should not have been required to present their request to the Planning and Development Committee first. The Trial Court’s decision should be reversed and the Greenville County BZA’s decision should be found in violation of statutory law and principles expounded by this court relative to Zoning matters in South Carolina

Respectfully submitted,

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