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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2022-000392

Opinion No. 2024-UP-838 (S.C. Ct. App. filed Nov. 13, 2024)

Wolfe Marie Vernon Trust,

Appellant/Petitioner,

v.

The Town of Mount Pleasant and The Mount Pleasant Board of Zoning Appeals,

Respondents.

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Wolfe Marie Vernon Trust, Appellant,

v.

The Town of Mount Pleasant and The Mount Pleasant
Board of Zoning Appeals, Respondents.

Appellate Case No. 2022-000392

Appeal From Charleston County
R. Ferrell Cothran, Jr., Circuit Court Judge

Unpublished Opinion No. 2024-UP-383
Heard September 10, 2024 – Filed November 13, 2024

AFFIRMED

Thomas J. Rode, of Thurmond Kirchner & Timbes, P.A.,
of Charleston, for Appellant.

Stephen Lynwood Brown, Russell Grainger Hines, and
Brian Lee Quisenberry, all of Clement Rivers, LLP, of
Charleston, for Respondents.

PER CURIAM: In this civil matter, the Wolfe Marie Vernon Trust (the Trust)
appeals the circuit court's order denying its appeal from the decision of the Mount

Pleasant Board of Zoning Appeals (the Board).¹ The Trust argues the Board (1) misinterpreted and misapplied the "building line" definition of the Mount Pleasant Zoning Code (the Code) in determining the front versus the rear of its lot and (2) violated the stated purpose of the Special R-2 Overlay Zoning District (the SROZD) ordinance by denying its permit request. We affirm.

1. The SROZD Ordinance Purpose

The Trust's lot is governed by the Code, which typically mandates that lots have a twenty-five-foot front and rear yard setback. However, in 2007, the Mount Pleasant Town Council (the Council) created the SROZD, which modified the front yard setback by reducing it to fifteen feet for lots within the district. The Trust's lot is located within the SROZD and is landlocked by other lots such that it is not visible from a public street. Additionally, the lot is roughly an "L-shape," and the east boundary is longer than the west boundary. The Trust planned to build a porch on the east-facing portion of its house. To build the porch in the desired dimensions and location, the east boundary of the lot would need to be considered the front of the property for the relaxed front yard setback of the SROZD to apply. However, the west-facing side of the house has the typical architectural characteristics of the front of a house. The Trust filed a permit request to deem the east boundary the front, and the Board denied the request.

In analyzing whether the Board improperly denied the Trust's request, we must first determine the SROZD ordinance's purpose. *See Arkay, LLC v. City of Charleston*, 418 S.C. 86, 91-93, 791 S.E.2d 305, 308 (Ct. App. 2016) ("This court will not reverse a zoning board's decision unless the board's findings of fact have no evidentiary support or the board commits an error of law."); *Mikell v. County of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009) ("The determination of legislative intent is a matter of law."); *City of Myrtle Beach v. Juel P. Corp.*, 344 S.C. 43, 47, 543 S.E.2d 538, 540 (2001) (stating "legislative intent must prevail if it can be reasonably discovered in the language used"). We find the intent of the Council in creating the SROZD was to allow homeowners to renovate and make additions to the *front* of their existing houses in a location where they would not have previously been able to do so. *See* TOWN OF MOUNT PLEASANT, S.C., CODE § 156.315(B)(3) (2007) (explaining that by creating the SROZD, homeowners could now "add porches as well as increased living space" to houses that were

¹ The respondents in this case include both the Town of Mount Pleasant and the Town of Mount Pleasant Board of Zoning Appeals. We will herein refer to them as the Board.

"currently at or over the [twenty-five-foot] front yard setback[s]"); § 156.315(A) (stating the purpose is to allow additions to homes that will "lead to an enhanced streetscape and a pedestrian-friendly environment"); § 156.315(E)(1) (stating the minimum yard requirements for the front yard were reduced to fifteen feet); § 156.315(B)(1) ("This district is located in the older part of the town developed before the current ordinances were enacted.").

However, while the SROZD mandates the front and rear setbacks are different, it does not instruct on how to determine the front versus the rear of a lot. Therefore, we must look at the rest of the Code to seek clarification. *See Hudson ex rel. Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 124-25, 754 S.E.2d 486, 492-93 (2014) ("[S]tatutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction.").

2. Definition Section Interpretation

We hold the Board properly interpreted and applied the building line definition found in the Code. *See Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995) (explaining our court gives "great deference to the decisions of those charged with interpreting and applying local zoning ordinances"). First, giving the ordinance a fair and practical reading, we find the "greatest buildable area" provision of the building line definition was included to ensure that even if a house was facing "sideways" or atypically situated on a lot, the bigger setbacks would not be applied to the longer lot dimensions. To read it differently would create a lot with wide yards on either side of the house and less buildable area. *See TOWN OF MOUNT PLEASANT, S.C., CODE § 156.007* (explaining "[f]ront and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), both regardless of lot and building orientation so as to provide the greatest amount of buildable area"); *Charleston Cnty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 68, 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."). While we acknowledge there are special cases, such as the irregularly shaped lot here, when the buildable area may not reach its absolute maximum under this interpretation and application of the "building line" definition, we find the purpose of the definition was to distinguish the front and rear boundaries from the side boundaries. *See Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) ("In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its

subject matter and accords with its general purpose.").

Next, when reading the definition of "building line" as a whole, we find the provision stating "both regardless of lot and building orientation" is used when determining the front and rear yards as opposed to the side yards. *See* § 156.007; *Eagle Container Co., LLC v. County of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 895-96 (2008) (alteration in original) ("[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.'" (citations omitted)). The sentence groups together the front and rear yards, i.e. the "shorter dimensions," and the side yards, i.e. the "longer dimensions," then explains "both" should be determined "regardless of orientation" "so as to provide the greatest amount of buildable area." *See* § 156.007; *Somers*, 319 S.C. at 68, 459 S.E.2d at 843 ("In construing ordinances, the terms used must be taken in their ordinary and popular meaning."); *Poole v. Saxon Mills*, 192 S.C. 339, 347, 6 S.E.2d 761, 764 (1940) (explaining that "phrases and sentences are to be construed according to the rules of grammar" (quoting G. A. Endlich, *A Commentary on the Interpretation of Statutes* 4 (1888))). While we acknowledge the definition is somewhat redundant in explaining how to determine the sides versus the front and rear of a lot, we cannot force meaning into the definition that is not there. *See Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 363 S.C. 612, 624, 611 S.E.2d 297, 303 (Ct. App. 2005) ("The words of a statute must be given the plain and ordinary meaning without resorting to subtle or forced construction.").

Therefore, because neither the SROZD nor the definition section of the Code provide us with guidance on how to determine the front versus the rear of a lot, we must use a common sense understanding of the "front" of a house. *See White v. State*, 375 S.C. 1, 8, 649 S.E.2d 172, 176 (Ct. App. 2007) ("[W]hen the legislature chooses not to define a term in a statute, courts will interpret the term in accord with its usual and customary meaning."). Here, the lot's address is for the street parallel and closest to the western boundary, and the driveway enters the lot on the western boundary. Additionally, the primary entrance and the typical architectural characteristics associated with the front of a house are located on the west-facing side of the Trust's house. Moreover, the Trust acknowledged that, from an architectural perspective, the west-facing side of the house is the primary façade. Therefore, we hold the west-facing side of the house is the front and should receive the relaxed fifteen-foot setback. Accordingly, we find the circuit court properly affirmed the Board's decision to deny the Trust's request to add the porch to the east-facing side of the house. *See Arkay, LLC*, 418 S.C. at 91-92, 791 S.E.2d at 308 ("This court will not reverse a zoning board's decision unless the

board's findings of fact have no evidentiary support or the board commits an error of law."); *Eagle Container Co.*, 379 S.C. at 568, 666 S.E.2d at 894 (stating "[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").

AFFIRMED.

WILLIAMS, C.J., and MCDONALD and TURNER, JJ., concur.

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SC Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
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Case No. 2022-000392

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The Town of Mount Pleasant and The Mount Pleasant Board of Zoning Appeals, Respondents.

BRIEF OF APPELLANT

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INTRODUCTION

Appellant (“Owner”) is the owner of a home located at 520 Whilden Street¹ (the “Lot”), in the Town of Mount Pleasant (the “Town”). This matter arises from a decision of the Town’s Board of Zoning Appeals (“BZA”) which refused to permit Owner to make certain improvements/extension to the home. (R. pp. 16-19). This refusal was premised on the BZA’s conclusion that the extension would exceed the permissible “Building Line” by encroaching on a purported 25’ “backyard” setback on the East side of the Lot. The essence of the issue on appeal is whether the East boundary is subject to this 25’ setback or whether the BZA should have properly determined the East boundary was subject to the smaller 15’ front yard setback under the applicable ordinance.

Here, the BZA’s decision was expressly based on the orientation of the house and resulted in decreasing, rather than increasing, the buildable area of the Lot. This violates the plain language of the Town’s Zoning Code which mandates the Building Line be established “*regardless of lot and building orientation so to provide the greatest amount of buildable area.*” M.P. Zoning Code. §156.007 (all emphasis added). Furthermore, Owner asserts that because the BZA’s decision is based on an inflexible interpretation of the Town’s yard requirements and fails to promote continued renovation to the homes in the neighborhood, it is inconsistent with the stated purpose for which the Town created the Special R-2 Overlay Zoning District (“SR2-OD”) where the Lot is located. *See* M.P. Zoning Code § 156.315(A)&(B)(3) (“The purpose of the district is to allow for continued construction, addition to, and renovation of homes” there, and to “enable homeowners to add porches [and] living space” to homes where the existing code would not accommodate it).

¹ The “Lot” is known to the tax assessor by TMS No. 532-01-00-271. (R. pp. 64-65).

ISSUES ON APPEAL

- I. Where the plain language of the Town's Zoning Code requires the Building Line must allow for the greatest buildable area, did the BZA err when it established the front Building Line on the East side of the Lot, because it decreased the Buildable Area of the Lot?
- II. Where the Town's Zoning Code requires the Building Lines be determined "regardless of lot and building orientation," did the BZA err when it established the front Building Line on the East side of the Lot based on the orientation of the Lot and the house?
- III. Where the stated purpose to the "SR2-OD" zoning district is to provide "flexible yard requirements" to allow "addition to and renovation of the homes located there," did the BZA err when it established the front Building Line on the East side of the Lot based on an inflexible and subjective interpretation of the yard requirements of the Code?

STATEMENT OF THE CASE

It is not disputed that the Lot is in the Town's Special R-2 Overlay Zoning District ("SR2-OD"). *See* M.P. Zoning Code § 156.315. Therefore, the buildable area of the Lot is limited by "[m]inimum front, side, and rear yard setbacks" as follows: 15' from the front lot line; 25' from the rear lot line, and 10' from each side lot line. M.P. Zoning Code. § 156.106(A); *see id.*; M.P. Zoning Code. § 156.303. Because the setbacks are different, identifying the front, back, and side lot lines is a necessary first step to the establishment of what the Code calls the "Building Line." The means for how the Building Line is to be established are prescribed in the following portion of Section 156.007 of the Zoning Ordinance:

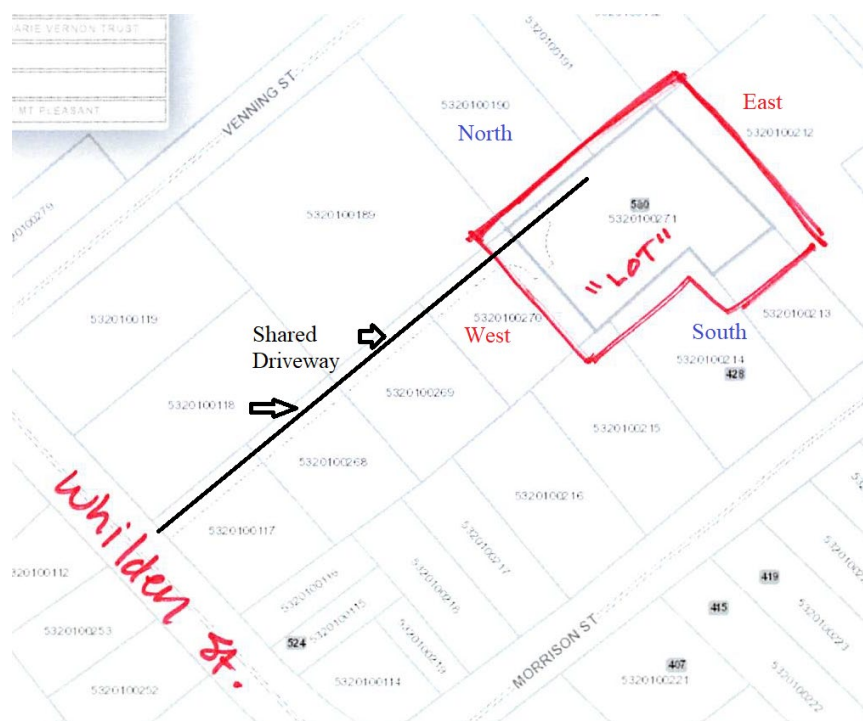
BUILDING LINE (includes *SETBACK*). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), **both regardless of lot and building orientation so as to provide the greatest amount of buildable area.**

M.P. Zoning Code. § 156.007 (emphasis added).

FACTS

Owner purchased the Lot in 2019. The crux of the dispute concerns the East and West lot lines and asks which is the front lot line and which is the rear lot line for the purposes of the Code's setback requirements.² To this question, certain characteristics of the Lot (depicted at **Fig. 1** below) are important.

Fig. 1 – The Lot (R. p. 65)



First, despite having a “Whilden Street” address, the Lot does not physically border this street. Instead, the Lot is landlocked, located directly in the middle of a block and bounded on all sides by other lots.³ The sole means of access is an ingress/egress easement over a shared driveway that connects the Lot (and several other lots) to Whilden Street. *See (Fig. 1)*. Because it is

² Although there is no disagreement that the North and South boundaries of the Lot are the “sides,” Owner does not concede this point to the extent that certain arguments and reasoning asserted by the Respondents in this matter are/may be logically inconsistent with this contention.

³ This block is bounded by Simmons Street to the East which is not shown on *Fig. 1*.

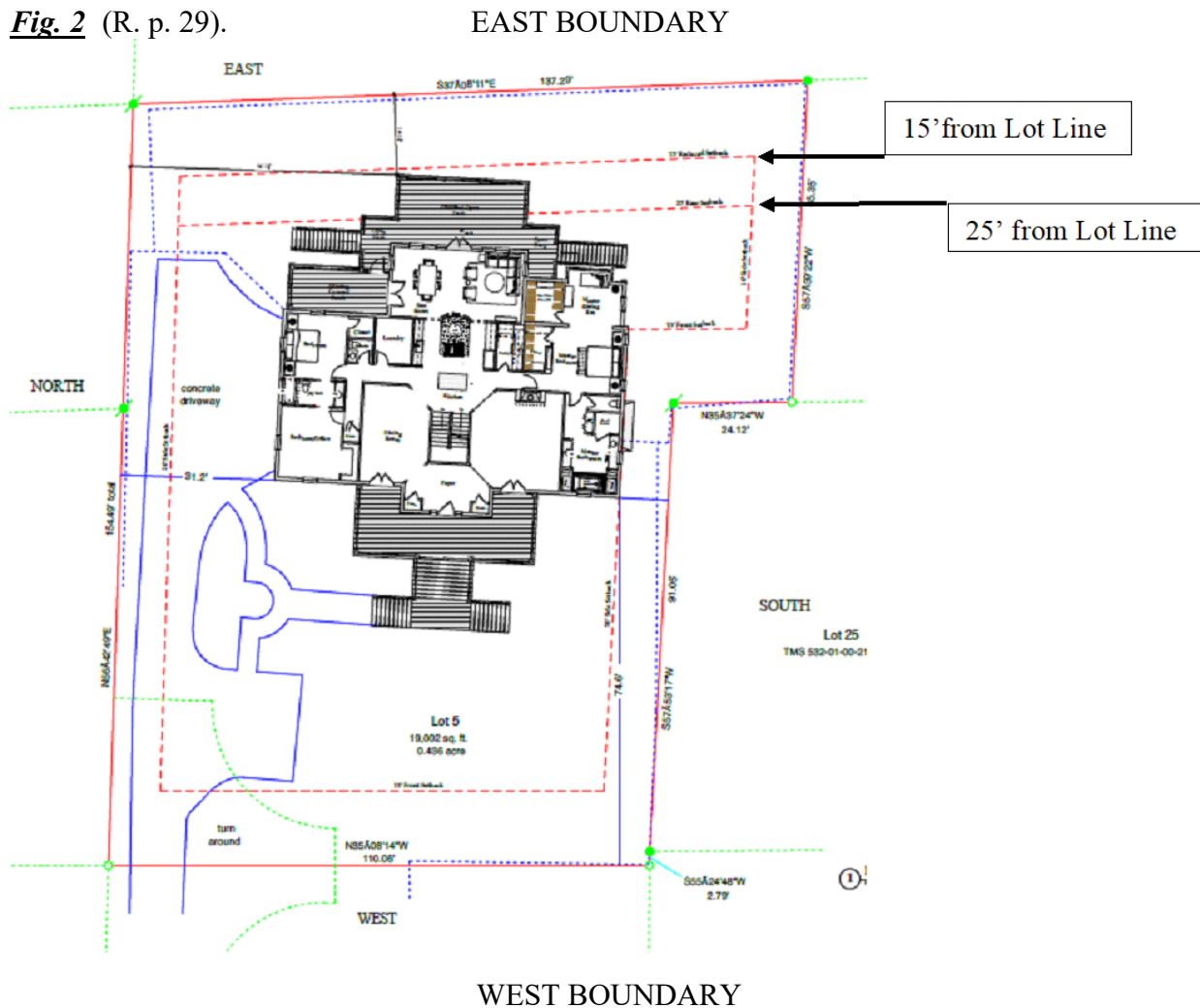
landlocked, the Lot is misaligned to its neighbors, and therefore does not have a front yard or back yard in the traditional sense. In other words, the North and South boundaries of the Lot (*i.e.*, the sides) abut the rear of the neighboring lots. Meanwhile, the East and West boundaries (*i.e.*, purported front/back) abut the sides of the neighboring lots. (R. pp. 64-65).

Second, the Lot is not uniformly shaped. Instead, it is “L” shaped, with the East boundary being substantially longer (at 137.29’) than the opposite West boundary (at 110.06’). (R. pp. 28-29). This fact is significant when it comes to evaluating how the setback requirements affect the buildable area of the Lot because, as explained herein, applying a larger setback to a longer boundary reduces the buildable area to a greater extent than would result from application of a smaller setback to the longer boundary.

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Before moving in, Owner prepared plans to renovate the home⁴. These plans included the addition of an enclosed porch on the East side of the house which was designed to accommodate a 15' setback and generally depicted in **Fig. 2** below. *See* (R. p. 29). However, the Town refused to permit the project, claiming, for the first time, that the East side was subject to a 25' setback under the “Building Line” provision of Section 156.007. (R. pp. 16-19); (R. pp. 25-27).

Fig. 2 (R. p. 29).



⁴ Owner is a trust. The beneficiaries of the trust are the residents of the home.

PROCEDURAL HISTORY

The Town's decision was initially made by an employee of the Town's Planning and Development Department (the "Department") and sent to Owner *via* email on November 20, 2020. (R. pp. 25-27). Under the procedures established by law, Owner timely requested the employee's decision be reviewed by the Town's Board of Zoning Appeals (the "BZA"). (R. pp. 20-29). Owner asserted the Department's email decision was in direct violation of Section 156.007 and inconsistent with the purpose for which the SR2-OD was created. (R. pp. 22-24). After a hearing on January 25, 2021, the BZA issued a written order that simply copied and pasted the relevant section of the employee's email as follows:

Although the definition notes that the setbacks are applied "regardless of lot and building orientation," [this] phrase is used in the context of establishing the setbacks based on the Lot dimensions, not lot or building orientation. If the longer dimension was on the street and the shorter dimension was the Lot depth from the street, then the front and rear setbacks would still be applied to the lot on the shorter dimension. The actual front yard of 15 feet allowed by [statute], in our opinion, would be the side from which the access to the lot is provided, in this case, the access easement side or primary façade of the principal structure designed as the "front."

(R. p. 18).

Plainly, the BZA's finding was based on the orientation of the Lot and the house. (R. *id*). Although acknowledging the relevant portion of Section 156.007 requires the Building Line be determined "regardless of lot and building orientation" the BZA summarily concludes it is not constrained by this because "the phrase is used in the context of establishing the setbacks based on the lot dimensions, not lot or building orientation." (R. *id*). Presumably, for the same reason, it did not matter to the BZA that its decision did not provide the greatest amount of buildable area. *See* (R. pp. 16-18).

Unable to understand how the BZA rationalized its conclusion that it was not constrained by the plain language of the Code, Owner timely appealed the BZA's Order to the Circuit Court on February 18, 2021, pursuant to S.C. Code Ann. § 6-29-710 *et seq.* (R. pp. 6-15). The matter was heard by the Circuit Court on December 16, 2021, (R. pp. 66-90) which issued a Form 4 Order on January 10, 2022, denying Owner's appeal. (R. pp. 1-3). Because the Circuit Court did not address any of Owner's arguments, Owner timely filed a motion pursuant to Rule 59, SCRPC. (R. pp. 90-100). The Circuit Court denied this motion on March 21, 2022. (R. pp. 4-5). This appeal timely followed. (R. p. 101).

STANDARD OF REVIEW

"[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review" and are subject to the same rules which apply to the interpretation of a statute. *Eagle Container LLC v. County of Newberry*, 379 S.C. 564, 666 S.E.2d 892 (2008); *see also Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009) (interpreting an ordinance); *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8, 776 S.E.2d 753, 757 (Ct. App. 2015) (affirming the Circuit Court's reversal of a Board of Zoning Appeals' interpretation of an ordinance). "Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." *CFRE, L.L.C. v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

ARGUMENT

As a threshold matter, the question here is not which face of the *house* appears to be the front, but which *lot line* is the front. Whether the BZA erred turns not on an interpretation of architecture, but on the interpretation of the Code. The BZA's decision is inconsistent with the Code for three reasons: (1) its decision does not "provide the greatest amount of buildable area"

as required by Section 156.007; (2) its decision was based on the lot and building orientation which is contrary to Section 156.007; and (3) the BZA's decision is inconsistent with the purpose for which the SR2-OD was created as stated in Section 156.315.

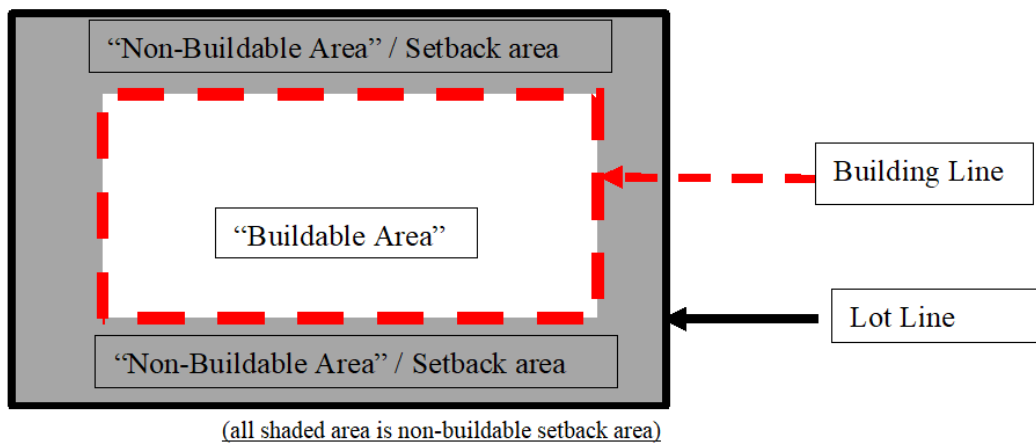
1. The BZA's Order is Contrary to the Requirement of Section 156.007 that Buildable Area Be Increased.

“When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used.” *Helicopter Sols.*, 414 S.C. at 10, 776 S.E.2d at 758 (quoting *Mikell*, 386 S.C. at 160, 687 S.E.2d at 330); *quoting Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). A court must “read the statute *as a whole* and in a manner consonant and in harmony with its purpose [and i]n that vein, [it] must read the statute so that no *word*, clause, sentence, provision or part shall be rendered *surplusage*, or *superfluous*, for [legislature] obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.” *Lemmons v. Maced. Water Works, Inc.*, 431 S.C. 186, 197, 847 S.E.2d 471, 477 (Ct. App. 2020) (emphasis original) (internal quotations omitted); *see also Olds v. City of Goose Creek*, 424 S.C. 240, 251, 818 S.E.2d 5, 11 (2018) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”).

The setbacks function to establish the Building Line as set out in Section 156.007. Under this provision a building cannot be erected outside the “Building Line.” This section also directs that the Building Line is to be established “so as to provide the greatest amount of *buildable area*.” M.P. Zoning Code. § 156.007 (emphasis added). The Code defines “Buildable Area” as “[t]he maximum two-dimensional space on a lot within which a structure or structures can be built, as permitted by applicable setback[.]” M.P. Zoning Code. § 156.007. Naturally, a property owner is not permitted to build in the setback area. Thus, for the purposes of the analysis here, the applicable

setbacks function to divide the Lot into “Buildable Area” and “non-buildable” area. The “Building Line” is the boundary between the two.⁵ Each of the front, back, and side lot lines will have a corresponding front, back, and side Building Line. *See* M.P. Zoning Code. § 156.007 (separately defining the side yard, front yard, and rear yard, as being (respectively) the space between the “side lot line” and “side building line;” “front lot line” and “front building line;” and “back lot line” and “back building line”). Once all the various Building Lines are determined, it will establish an interior boundary (or “box”) within the Lot. This box represents the Buildable Area. *See (Fig. 3)* (as a visual example of a Building Line creating the Buildable Area as a “box” within a lot).

Fig. 3. (Example of Building Line dividing Buildable Area from Non-Buildable Area)



As the Code makes plain, the “Buildable Area” is the total area of the Lot minus the setback areas or “non-buildable area.” Thus, the larger the total setback area, the smaller the Buildable Area. Therefore, it becomes significant that the East boundary is 137.29’ in length and substantially longer than the West boundary, which measures only 110.06’. (R. p. 29).

⁵ For clarity, while the Code specifically defines “Buildable Area” it does not specifically define “non-buildable area” because it is synonymous with the setback area. Owner uses “non-buildable area” as a convenient way to refer to all that area of the Lot which is not contained in the “Buildable Area.”

Keeping the total of the two side setback areas constant, simple geometry demonstrates that the BZA's application of the larger 25' rear setback to the longer East boundary (and therefore the 15' front setback to the shorter West boundary) yields a sum total for the front and back setback areas of 5,083.15' sq. ft. On the other hand, using the East boundary as the *front* and the West boundary as the rear, the sum total of the front and rear setback is less, measuring only 4,810.85 sq. ft.⁶ Because a larger setback area yields a smaller "Buildable Area," it follows that in order to "provide the greatest amount of buildable area" as required by the Code, the East boundary must be deemed the front. Thus, among the two alternatives, it is only by applying the front yard setback to the East boundary that the statutory requirement to "provide the greatest amount of buildable area" can be satisfied.

Here the BZA's ruling completely ignores this plain and explicit requirement. This is an error of law. *See e.g., Lemmons*, 431 S.C. at 197, 847 S.E.2d at 477 (confirming that when interpreting and applying an ordinance "that no word, clause, sentence, provision or part be rendered *surplusage*, or *superfluous*, for [legislature] obviously intended the statute to have some efficacy"). Had the Legislature intended a different means of identifying the building lines it would have stated as much. *See Taylor v. S.C. DMV*, 382 S.C. 567, 570, 677 S.E.2d 588, 590 (2009) ("if [the] Legislature had intended [a] certain result in a statute it would have said so") (citation

⁶ Because the side setbacks are the same for each side (*i.e.*, 10' on the North and South each) the total side setback area remains constant, regardless of whether the East is considered the front or back. Thus, the point can be illustrated by considering only the total front and rear setback areas under the two alternatives:

Alternative 1: East as rear and West as front (as the BZA found) yields a total front and back setback area of 5,083.15 sq. ft. This is reflected by: $(137.29' \times 25') + (110.06' \times 15') = 5,083.15$.

Alternative 2: East as front and West as rear (as Owner argues) yields a total front and back setback area of 4,810.85 sq. ft. This is reflected by: $(137.29' \times 15') + (110.06' \times 25') = 4,810.85$.

omitted); *see also State v. Zulfer*, 345 S.C. 258, 262-63, 547 S.E.2d 885, 887 (Ct. App. 2001) (“[H]ad the legislature intended [a statute to produce a certain result] it could easily have limited the statute [accordingly].”).⁷

Therefore, the BZA’s ruling must be reversed.

2. The BZA’s Finding is Specifically Based on the Orientation of the Lot and the House Which is Also Contrary to the Plain Language of the Ordinance.

The BZA’s Order expressly acknowledges that Section 156.007 requires that the determination of the Building Lines be made “regardless of lot and building orientation.” (R. pp. 17-18). But, there can be little debate that the BZA’s decision is based precisely on lot and building orientation. The BZA’s Order acknowledges as much. The premise of the BZA’s Order is not that its decision is consistent with this statutory requirement, but instead that this requirement does not apply here. Or as the BZA stated: it only applies “in the context of establishing the setbacks based on the Lot dimensions, not lot or building orientation.” (R. p.18). While it is not entirely clear what this means, it seems the BZA is suggesting it is only the determination of a lot’s dimensions (*i.e.*, determining which dimension is longer and which is shorter) that must be made without regard to lot or building orientation. As such, it appears the BZA takes the position that it is free to make other decisions based on the otherwise prohibited consideration of lot and/or building orientation.

This reasoning makes little sense. The determination of which dimension is shorter, and which is longer, is purely objective and could never be affected by building or lot orientation. It is simple math. If the establishment of the Building Lines under Section 156.007 is limited to simply

⁷ It bears mention that the Lot’s West boundary (what the BZA determined to be the front) abuts the side of a “postage stamp.” (R. pp. 64-65). This postage stamp lot has zero side setback. Thus, the BZA’s reasoning would be that Owner cannot build a porch on the East side which would be at least 25’ from any neighboring structure but could erect a structure 15’ from the exterior wall of the western neighbor.

determining the longer and short dimension, the Code would have provided such and there would be no reason to include the “regardless of [] orientation” phrase. To the contrary, it must be that this phrase was intended to do something, and to give this phrase effect, it must be that it exists to inform the decision-making process where lot or building orientation may otherwise be a tempting basis to distinguish one building line from another not distinguish the longer dimension from a shorter dimension. *See CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 (holding that statutes we must read so “that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”).

The problem with the BZA’s suggestion is that Section 156.007 is not limited to simply determining the longest and shortest dimensions of a lot. Rather, this provision deals with the establishment of the “Building Line.” This is significant, because at least in the context of the SR2-OD where the front and back yards have different setbacks, the Building Line cannot be established until the front and back are determined. Thus, there is little merit to the BZA’s suggestion that distinguishing between the front and back setbacks is not contemplated by Section 156.007, and therefore not controlled by the “regardless of [] orientation” phrase. *See S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (statutes must be “read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.”).⁸

At bottom the BZA has ruled that for the purposes of setbacks, the front yard is the yard between the front façade of a house front lot line and the rear yard is the yard between the rear

⁸ The SR2-OD is the only low-density residential zoning district in the Town that has different setbacks for the front and back. In all the others, the front and rear setback are equal. As a result, the BZA’s reasoning, although incorrect, would be of no consequence outside the SR2-OD. *See* M.P. Zoning Code. § 156.303 (establishing equal front and back setbacks for R-1, R-2, and R-3 districts).

façade of a house and the rear lot line. While this may, at first blush, seem a reasonable assumption based on how the terms may be used in common parlance, that assumption cannot carry the day because these terms are specifically defined by the Code in the definitions of Section 156.007. There, front yard is defined “a yard situated between the **front building line** and the front lot line.” M.P. Zoning Code § 156.007 at “yard, front” (emphasis added). Similarly, the Code specifically defines rear yard as “a yard situated between the **rear building line** and the rear lot line extending the full width of the lot.” *Id.* at “yard, rear” (emphasis added).

While the Town could have passed legislation that defined “front yard” by reference to the orientation of the building—*i.e.*, by reference to the façade of the building—it did not. *See Taylor*, 382 S.C. at 570, 677 S.E.2d at 590 (“if [the] Legislature had intended [a] certain result in a statute it would have said so”). Instead, the Code defines front and rear yards by reference to the “Building Line.” This is significant because, it refutes the BZA’s contention that the “regardless of [] orientation” phrase in the definition of Building Line, does not apply here. These definitions of front and rear yards make clear that the determination must be made as if there were no house on the lot. Here, because the BZA’s definition is based on the façade of the house, its decision would be subject to change if it were assumed there were no house on the Lot. This cannot stand under these plain definitions.

Ultimately, the plain language of Section 156.007 establishes a clear legislative intent that the Building Line (which necessarily includes identifying the front and rear setback) is to be established by purely objective criteria—*i.e.*, without regard to building or lot orientation and to maximize buildable area. Here, the BZA’s decision is unavoidably based on its *subjective* opinion. *See* (R. p. 18) (stating the determination was premised on the BZA’s “opinion” based on the orientation of the house). Accordingly, the BZA’s decision is inconsistent with the plain statutory

intent that the determination be limited to objective, rather than subjective, criteria. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning.”); *see also, Mikell*, 386 S.C. at 160, 687 S.E.2d at 330 (“When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used.”).

Thus, this Court should reverse the BZA’s ruling.

3. The BZA’s Decision is Inconsistent with the Stated Purpose for Which the Town Created the SR2-OD.

Even to the extent there is any ambiguity as to whether the BZA’s decision violated the plain language, its decision is nonetheless inconsistent with the stated purpose for which the Town Council created the SR2-OD in which the Lot is located. Specifically, in creating this special overlay district, the Town Council expressly stated: “The purpose of the district is to allow for continued construction, addition to, and renovation of homes” there, and to “enable homeowners to add porches [and] living space” to homes where the existing code would not accommodate it. *See* M.P. Zoning Code §156.315(A)&(B)(3). The Council further elucidated that to serve this policy it was “creating [the SR2-OD] special overlay zoning classification **with flexible yard requirements.**” M.P. Zoning Ord. §156.315(A) (emphasis added).

Here, the BZA’s decision serves none of these stated purposes. Instead, it created an inflexible approach to the yard requirements that is left to the subjective facies of the BZA. Such an approach effectively ignores the discussed provisions of the Code. Residents and property owners should be entitled to rely on the fact that the Zoning Ordinances will be applied objectively and as written. The BZA’s failure to serve the stated purpose of the SR2-OD further demonstrates its decision in this matter was wrong and must be reversed. *See, Hughes v. W. Carolina Reg’l*

Sewer Auth., 386 S.C. 641, 647, 689 S.E.2d 638, 641 (Ct. App. 2010) (“Statutes must be read as a whole and sections that are part of the same *statutory scheme* must be construed together.”); *Lemmons*, 431 S.C. at 197, 847 S.E.2d at 477 (requiring a court to “read the statute as a whole and in a manner consonant and *in harmony with its purpose*”) (emphasis added).

Therefore, because the BZA’s ruling is inconsistent with the stated purpose of the Code, it should be reversed.

CONCLUSION

For these reasons, the BZA’s Order must be reversed, and the East boundary of the Lot be determined to be the front rather than the back.

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2022-000392

Wolfe Marie Vernon Trust,

Appellant,

v.

The Town of Mount Pleasant and The Mount Pleasant Board of Zoning Appeals, Respondents.

CERTIFICATION OF COUNSEL

The undersigned certifies that the enclosed complies with Rule 211, SCACR.

Respectfully submitted,

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APPEAL FROM CHARLESTON COUNTY
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Case No.: 2022-000392

Wolf Marie Vernon Trust,

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v.

The Town of Mount Pleasant and The Mount Pleasant Board of Zoning Appeals, Respondents.

PROOF OF SERVICE

The undersigned certifies that she served a copy of the foregoing **Brief of Appellant and Certification of Counsel** to all counsel of record on January 3, 2023, by mailing a copy of the same, electronically or with proper postage affixed thereto, as follows:

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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2022-000392
Circuit Court Case No. 2021-CP-10-00785

The Wolf Marie Vernon Trust,

Appellant,

v.

The Town of Mount Pleasant and the Mount Pleasant Board of
Zoning Appeals,

Respondents.

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Respondents The Town of Mount Pleasant and the Mount Pleasant Board of Zoning Appeals (“Respondents”, “Town” or “BZA”) hereby submit this brief in response to Appellant The Wolfe Marie Vernon Trust’s (“Appellant”) brief. Respondents respectfully assert there is more than ample evidence in the record to support the decision of the BZA. (R. pp. 30-55.) As such, further review is not required. S.C. Code Ann. § 6-29-840(A); *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 466, 602 S.E.2d 76, 79 (Ct. App. 2004) (decision of the reviewing body will be upheld if there is evidence in the record to support its decision), *aff’d* 372 S.C. 230, 642 S.E.2d 565 (2007).

INTRODUCTION

The home in issue is located at 520 Whilden Street, in Mount Pleasant.¹ It sits too close to the rear setback line of the property to allow Appellant to build a proposed new rear addition. Appellant, therefore, seeks in this appeal to obtain a judicial declaration that the “rear” of their property should be treated as if it were the “front” in order to avoid rear property line set back requirements which are more stringent than front property line set back requirements. The Town’s Zoning Official denied Appellant’s request, the BZA unanimously affirmed the Town’s decision, and the Circuit Court likewise affirmed the BZA’s decision. This Court of Appeals should do likewise.²

¹ The home in issue is owned by a trust. (R. pp. 6-15; 20-29.)

² Although simplified for ease of reference, Appellant sought a determination from the Zoning Official that the west boundary of the property constituted the front yard for set-back purposes. The Zoning Official determined to the contrary. Appellant appealed the determination to the BZA. The BZA reviewed the determination *de novo* and affirmed the Zoning Official’s determination. Appellant then appealed to the Circuit Court pursuant to S.C. Code Ann. § 6-29-820(A). (R. pp. 6-29). The Circuit Court affirmed the BZA’s ruling and found by its initial Form 4 Order and later Order (responding to Respondent’s Motion to Alter or Amend and/or for Clarification) that the Court’s Order affirming the BZA’s decision and the Zoning Official’s determination were “fully supported by the law and the evidence” (R. pp. 1-3; R. pp. 4-5).

Appellant's argument distorts the definition of the term "Building Line" contained in the Town of Mount Pleasant Ordinance provision §156.007. Appellant argues that the definition precludes the Town from declaring the front lot line of Appellant's property the "front" because, according to the Appellant, the Town must make the decision of which is the front and which is the rear *regardless of orientation* and in a manner *that maximizes buildable area*. Appellant is wrong.

The provision upon which Appellant's argument relies is completely irrelevant to determining the front versus the rear. By its own terms, it only applies when determining "front and rear yards" as opposed to side yards. The Town is not prohibited from declaring or determining the "front" of the property. The BZA and Circuit Court correctly affirmed the Town's decision that the rear setback requirement applies to the "rear" of Appellant's property. This Court of Appeals should likewise uphold the decision of the BZA and the Circuit Court.

STANDARD OF REVIEW

The standard of review for this Court of Appeals reviewing a Circuit Court affirmation of a BZA ruling is very narrow. This Court is to treat the findings of fact by the BZA in the same manner as a finding of fact by a jury. *See* S.C. Code Ann. §6-29-840(A). Concerning issues presented by the appeal, "the court shall determine only whether the decision of the board is correct as a matter of law". *McCrowey v. Zoning Bd. of Adjustment of City of Rock Hill*, 360 S.C. 301, 304, 599 S.E.2d 617, 619 (Ct. App. 2004).

"Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the

The “North” and the “South” lot lines are the longer sides of the property and the “West” and the “East” lot lines are the shorter sides. The “North” length of Plaintiff’s property is the length along the access easement roadway. The “South” length consists of a border with a neighboring property.

The “West” lot line faces the direction of the public street where the roadway easement accesses the property, and is where the main, or front, entrance to the residence is located.³ (R. pp. 56-57.) The “East” end of the property contains a border with a neighboring property and no access. Appellant seeks to build an addition to their residence on the “East” side of the property. Appellant hopes to secure a relaxed setback by having the East side designated as the “front”. The only problem is it is the back of the home.

The Town’s Zoning Official correctly determined that the “West” end of the property is the front, and the “East” end is the rear of the property. (R. pp. 25-27.) The BZA affirmed the Zoning Official’s decision and denied the Appellant’s appeal. (R. pp. 16-19.) The Circuit Court heard extensive arguments before it affirmed the ruling of the BZA. (R. pp. 1-29, 101-102); R. pp. 66-90.) This Court of Appeals should do likewise.

ARGUMENT

I. The BZA and Circuit Court Correctly Affirmed the Town’s Decision and Denied Appellant’s Appeal.

The Appellant takes issue with the Town’s determination that the West end of their home is the “front” and the East end of their home is the “rear.” Appellant points to the definition of “Building Line” in §156.007 of the Mount Pleasant Code of Ordinances for their position:

³ See, the publicly accessible photograph of West End “Front” of Appellant’s Property, attached as Exhibit A to Circuit Court Memorandum of Respondents, and also accessible at https://www.zillow.com/homes/520-Whilden-Street,-Mount-Pleasant,-SC29464_rb/10924063_zpid/?mmlb=g,0. The Town determined the front yard was, among other things, consistent with the location of the front entrance or façade primary to the home.

BUILDING LINE (includes **SETBACK**). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. *Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), both regardless of lot and building orientation so as to provide the greatest amount of buildable area.*⁴

The requirements contained in this definition - “regardless of orientation” and “so as to provide the greatest amount of buildable area” – apply only to two determinations: what lot lines are the shorter width (front/rear) and what lot lines are the longer length (sides). Importantly, these requirements do not apply to determining the front vs. the rear of the property. This is consistent with the language used in the applicable ordinance. *See Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (court should look to the language used in a legislative enactment).

The BZA agreed with the Town Administrator’s determination and unanimously denied Appellant’s appeal holding:

Although the definition notes that the setbacks are applied ‘regardless of lot and building orientation’, the phrase is used in the context of establishing the setbacks based on lot dimensions, not lot or building orientation. If the longer dimension was on the street and the shorter dimension was the lot depth from the street, then the front and rear setbacks would still be applied to the lot on the shorter dimension. The actual front yard of 15 feet allowed by §156.315E.1, in our opinion, would be the side from which the access to the lot is provided, in this case, the access easement side or primary façade of the principal structure designed as the ‘front’.

(R. pp. 16-19.)

Applying the Town’s interpretation to Appellant’s property, the longer lengths of the property are the North and South lot lines. As such, those lot lines are the “sides” of the property.

⁴ See Mount Pleasant Code of Ordinances, §156.007. (Emphasis Added).

The width of the property, or shorter distances, are the East and West lot lines of the property. As such, those lot lines are the front and rear property lines. This decision is precisely what Section §156.007 is referencing. It must be made purely by examining the dimensions of the given property – the length versus the width – and regardless of lot orientation and to maximize the buildable area. The Town’s application is precisely what the definition calls for, but is not consistent with Appellant’s plans to expand their house.

The decision concerning which of the lot lines is the front and which is the rear is a separate and distinct determination. Importantly, Mount Pleasant’s Ordinance is silent on the definition of front lot line and rear lot line. When a statute or an ordinance is silent on an issue, or a word is undefined, the customary and usual meaning is instructive in ascertaining the legislature’s intent. *See White v. State*, 375 S.C. 1, 8, 649 S.E.2d 172, 176 (Ct. App. 2007); *see also Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005).

The Zoning Official and BZA determined the West end of Appellant’s property is the primary façade and the main access point of the home. The common sense understanding of the “front” of a property, which includes an existing residence, is the main access point and primary façade of the home. Simply put, it is where the front of the home is located. Accordingly, the Town correctly determined the West end of the property was the “front”. A contrary view would make the determination of the front yard and the rear yard and the corresponding set back requirements without meaning. They could be determined via manipulation by a property owner leading to a hodge-podge approach throughout this district. Our courts will not construe a statute in a way which leads to absurd results or renders provisions meaningless. *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012).

Once the front and the rear lot lines are identified, the Town then applies the appropriate setback distance based on the applicable zoning district. The Appellants property is located in the SR2-OD, Special R-2 Overlay District. This Special Overlay District contains a more relaxed fifteen (15) feet minimum setback in the front yard (compared to twenty-five (25) feet in other locations of the Town).⁵ In this case, the Town correctly determined that a fifteen (15) feet front yard setback applied to the West end of Appellant's property.

Appellant, however, wants to build an addition to the rear of their residence rather than on the front. Accordingly, Appellant seeks to have the rear designated as the "front" to gain the relaxed fifteen (15) feet minimum setback for front yards in the overlay district. Appellant should not be allowed to disregard the Town's Zoning Ordinances and legislative enactments merely to suit their own purpose. Such a ruling would have a far greater impact beyond this one residence. Planning and zoning determinations are complex, determined by a deliberate process after careful debate and should not result in "patchwork zoning with little rhyme or reason." *I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). Appellant's proposed interpretation would do just that.

Appellant argues the definition of "Building Line" – "regardless of orientation" and "so as to provide the greatest amount of buildable area" – not only applies to the first step of determining the length and the width of the property, but also to determining which lot line is the front and which is the rear. This interpretation, however, mischaracterizes the language of the ordinance, Town's process, the legislative intent, and the practical realities in making these separate determinations. Such an argument rests on the supposition that there really is no

⁵ See Mount Pleasant Code of Ordinances §156.315(E)(1); see also Mount Pleasant Code of Ordinances §156.303(C)(1) "Development Standards for Single-Family Detached" (Per Table) for R-2 Residential Districts (requiring a minimum front yard setback of 25 ft.).

difference between the front yard property line and the rear yard property line other than selecting them based upon obtaining maximum buildable space. According to Appellant, it is only then that setbacks are determined. This is not only inconsistent with a harmonious reading of the applicable ordinance provisions, but renders the language of Zoning Ordinance 156.007 superfluous. Such an interpretation is inconsistent with South Carolina law. Therefore, Appellant's argument should be rejected and the appeal should be denied.

II. The Purpose of the Special Overlay District is to Enhance the Streetscape.

Appellant argues that the BZA's decision is "inconsistent with the purpose for which the Town created the SR2-OD." The provision containing the purpose of the SR2-OD Special R-2 Overlay District provides as follows:

The purpose of the district is to allow for the continued construction, addition to, and renovation of homes located in the older, built out neighborhoods between Coleman Boulevard and the Historic District, by creating a special overlay zoning classification with flexible yard requirements. **This will lead to an enhanced streetscape and a pedestrian- friendly environment.**⁶

Appellant focuses on the phrase "with flexible yard requirements" to argue the Town must make the determination of front versus rear in its favor. Appellant is mistaken.

The phrase "flexible yard requirements" references the reduced setback requirements contained in the Special R-2 Overlay District as compared to other zoning districts in the Town. For example, the setback requirement of fifteen (15) feet in the front yard in the Special R-2 Overlay District is *less stringent* than the twenty-five (25) feet setback requirements for front yards in other districts within the Town.⁷ By reducing the restrictions on front setbacks, the

⁶ See Mount Pleasant Code of Ordinances §156.315(A) (Emphasis Added).

⁷ See Mount Pleasant Code of Ordinances §156.303(C)(1) "Development Standards for Single-Family Detached" (Per Table) for R-2 Residential Districts (requiring a minimum front yard setback of 25 ft.).

Town relaxed the yard requirements in the Special R-2 Overlay District to create the enhanced streetscape envisioned. That is what the phrase “flexible yard requirements” means. It does not mean the Town must make the front and back lot line determinations to maximize the Appellant’s buildable area or suit their plans for home expansion.

Furthermore, “flexible yard requirements” is not the “purpose” of the Special R-2 Overlay District as Appellant contends. Rather, the smaller setbacks contained in the ordinance *lead to* the purpose of the Special R-2 Overlay District (“***This will lead to an enhanced streetscape and a pedestrian-friendly environment.***”). The purpose of the District, therefore, is to create this enhanced streetscape and pedestrian-friendly environment.

The BZA’s decision was consistent with the purpose of the District. The BZA’s decision keeps the street facing and roadway easement access side of Appellant’s property as the “front”, which is where the relaxed set back is applied. Under Appellant’s interpretation, the street facing side of any property in the District could be designated the “rear” and the back side the “front” because Appellant would make the decision “regardless of orientation” and “so as to provide the greatest amount of buildable area”. This would cause the houses throughout the Special R-2 Overlay District to be facing different directions with no homogeneity or uniformity, which would defeat the enhanced streetscape purpose of the Special R-2 Overlay District. Accordingly, the Appellant’s argument should be rejected and the appeal should be denied.

If this Court were to reverse the rulings of the BZA and Circuit Court regarding the interpretation of the Town’s ordinances, it would apply ***Town wide*** - not just to Appellant’s property. Such a ruling would end the Town’s ability to designate the “front” vs. the “rear” of a property based on which side faces the street and/or the primary façade of the home. The result would be that houses throughout the Special R-2 Overlay District could face various directions at

the property owner's discretion so they could "maximize their buildable area". The true/actual street facing side could be designated as the rear for any building determination. Unquestionably, this would lead to the diminishment of the harmony of building/remodeling homes throughout the Special R-2 Overlay District and would detract from a harmonious streetscape. Consideration of such must be made by looking at the overlay district as a whole and not just as the Appellant's home in isolation or a vacuum.

CONCLUSION

Based on the foregoing reasoning and authority, Respondents respectfully request that this Court of Appeals affirm the decision of the BZA and the Circuit Court.

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January 3, 2023

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

RECEIVED

Jan 03 2023

SC Court of Appeals

Appeal from Charleston County
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2022-000392
Circuit Court Case No. 2021-CP-10-00785

The Wolf Marie Vernon Trust,

Appellant,

v.

The Town of Mount Pleasant and the Mount Pleasant Board of
Zoning Appeals,

Respondents.

RESPONDENTS' CERTIFICATION FOR FINAL BRIEF

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I, Stephen L. Brown, do hereby certify that Respondents' Final Brief complies with Rule 211(b), SCACR. Additionally, the undersigned hereby certifies that this filing complies with the Supreme Court order of April 15, 2014.

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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2022-000392

Wolfe Marie Vernon Trust,

Appellant,

v.

The Town of Mount Pleasant and The Mount Pleasant Board of Zoning Appeals, Respondents.

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RE-INTRODUCTION

This matter began when appellant (herein “Owner”) sought permission to build an extension on the East side of her home, which is located at 520 Whilden Street (the “Lot”) in the Town of Mount Pleasant (the “Town”). In November of 2020, the Town’s zoning administrator refused to permit the project, asserting it would exceed the Lot’s Building Line because the East side of the Lot is subject to a purported 25’ rear yard setback. (R. p. 25). Owner appealed this decision to the Town’s Board of Zoning Appeals (“BZA”), asserting that under the Town’s Zoning Ordinances, the East side was subject to a lesser 15’ front yard setback. (R. p. 20). In December 2020, this matter went before the BZA for a determination of how far the Building Line needed to be setback from the East Lot Line. On January 26, 2021, the BZA issued an order finding the Building Line on the East side of the Lot must accommodate a 25’ rear yard setback, rather than the lesser 15’ front yard setback. (R. p. 18). Owner appealed first to the Circuit Court, then to this Court, asserting the BZA’s ruling violates the plain language of the Town’s Zoning Ordinances which, in defining both “Building Line” and “Setback,” directs that the location of the front and rear yards must be “both regardless of lot and building orientation so as to provide the **greatest amount of buildable area.**” M.P. Zoning Code. § 156.007. (emphasis added).

In their Brief, Respondents do not dispute that the BZA’s decision was based on orientation of the lot and building, nor do Respondents dispute that the BZA’s decision failed to provide the greatest amount of buildable area. Instead, Respondents make the conclusory assumption that these requirements—which appear in the definition of both “Building Line” and “Setback”—do not apply to the BZA’s determination regarding the location of the Building Line for the front and rear yard setbacks in this case. As explained herein, Respondents’ assumption is meritless, and this Court should reverse.

SUMMARY OF STATUTORY SCHEME AND THE BZA’S ERRORS

The Town’s Zoning Ordinance prohibits building to the property line by imposing setback requirements for minimum front, rear, and side yards, within which no construction is permitted. In the SR2-OD district (where the Lot is located) there is a 15’ front yard setback; a 25’ rear yard setback; and a 10’ setback for each side yard. This leaves construction limited to the “Buildable Area” which the ordinance defines as “[t]he **maximum** two-dimensional space on a lot within which a structure or structures can be built, as permitted by applicable setback[.]” M.P. Zoning Code. § 156.007 (emphasis added).

The boundary between the Buildable Area (where construction is permitted) and the setback areas (where construction is prohibited) is demarcated by the “Building Line.” The ordinance defines Building Line and Setback synonymously, in a single definition which provides:

BUILDING LINE (includes *SETBACK*). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), **both regardless of lot and building orientation so as to provide the greatest amount of buildable area.**

M.P. Zoning Code. § 156.007 (emphasis added).

In this case, Owner’s proposed extension would be roughly 16.5’ from the East property line — well within the 15’ front yard setback. (R. p. 29). Thus, no matter how much Respondents may try to suggest this matter does not implicate the definition of Building Line, there is no way around the fact that whether Owner’s extension is permissible turns on how far the Building Line must be setback from the East property line. For this, there are only two opposite alternatives:

Owner’s Position

East = Front yard setback (15’)

West = Rear yard setback (25’)

Resulting Buildable Area = Maximized

Respondents’/BZA’s Position

East = Rear yard setback (25’)

West = Front yard setback (15’)

Resulting Buildable Area = Minimized

Of these two options, Respondents do not (because they cannot) dispute that their interpretation yields the smaller amount of Buildable Area. Only Owner's interpretation provides the greatest amount of Buildable Area.¹ While Respondents attempt to paint this case as posing a question of "front vs. rear," rather than location of the Building Line, this does not change the analysis.

No matter how it is phrased (or how Respondents spin it) the fundamental question before this Court is: Does the above statutory language permit the BZA to make a decision regarding the location of the front and rear of the Lot in such a way that the resulting Building Line and Setback provides the least, rather than the greatest, amount of Buildable Area? It does not. Therefore, this Court should reverse the BZA's order and instead find the Building Line need only be setback 15' from the East boundary.

ARGUMENTS IN REPLY

Because Respondents cannot dispute that the BZA's decision was based on building and lot orientation and resulted in a minimized Buildable Area, Respondents are left to argue that these requirements do not apply to the BZA when deciding the location of the front and rear yards. Respondents also attempt to argue the BZA's decision is consistent with the purpose for which the Town created the SR2-OD because it enhances the streetscape. However, as explained herein, Respondents' arguments are both illogical and inconsistent with the plain language of the ordinance.

I. Respondents' argument that the BZA could ignore the orientation and Buildable Area requirements is inconsistent with the plain language of the ordinance.

As stated above, the ordinance provides a single statutory definition for both "Building

¹ See (App. Br. p. 10 fn. 6) (explaining the effect on Buildable Area of these competing alternatives).

Line” and “Setback” which provides:

BUILDING LINE (includes *SETBACK*). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), **both regardless of lot and building orientation so as to provide the greatest amount of buildable area.**

M.P. Zoning Code. § 156.007 (emphasis added).

Respondents’ arguments to this Court are premised upon the assumption that the statutory requirements to fix the Building Line “regardless of lot and building orientation so as to provide the greatest amount of buildable area” did not apply to the issue before the BZA. Hoping to justify this illogical assumption Respondents mischaracterize the issue. This Court should not be fooled. These requirements absolutely apply here, and to allow the BZA to ignore these requirements in this case would effectively nullify the Town’s Ordinances.

- A. Respondents mischaracterize Owner’s argument. This case is not about the front vs. rear of the *house*, this case is about the front vs. rear *yards*, and the corresponding Building Line and Setback requirements.

As a threshold matter, Respondents consistently mischaracterize the nature of Owner’s arguments on appeal. This begins with the very first sentence of Respondents’ argument section in which Respondents claim, “[Owner] takes issue with the [BZA’s] determination that the West end *of their home* is the front, and the East end *of their home* is the rear.” (Resp. Br. p. 4) (emphasis added). This is wrong and fundamentally misses the point.

The BZA stated that the 15’ front yard setback would apply to the West side of the Lot because “in our opinion” this corresponds to the “primary façade of the principal structure designed as the ‘front’.” (R. p. 18). However, to be clear, Owner does not take issue with the fact that the BZA offered an “opinion” that the West side of the *house* is the “primary façade” because

determination of the front vs. rear of the *house* should be irrelevant. The ordinance makes this plain, directing the decision should be “**regardless of lot and building orientation.**” M.P. Zoning Code. § 156.007 (emphasis added). The problem does not lie in the BZA’s opinion regarding the front and rear of the *house*. Instead, the problem lies in the fact that the BZA’s order leaves the location of the front and rear *Setback* to be determined by the location of the front and rear of the *house*—*i.e.*, building orientation. Exactly the opposite of what the ordinance mandates. *That* is what Owner “takes issue with.”

Had the Town’s legislative body intended the Building Line or Setback to be dictated by the “primary façade” of the building, it could have stated as much. This is particularly true considering that the ordinance employs the term “primary façade” in other provisions. *See e.g.*, M.P. Zoning Code. § 156.310(E)(2) (discussing the “architectural design[s]” of commercial buildings—not residential buildings—and explaining the “primary façade” should face the street). Thus, the fact that the ordinance does not reference the “primary façade” in the sections concerning Building Line, Setback, or Front Yard indicates that Respondent’s interpretation is not what the Town intended. *See Hughes v. W. Carolina Reg’l Sewer Auth.*, 386 S.C. 641, 649, 689 S.E.2d 638, 643 (Ct. App. 2010) (“The general provisions of statutory construction would mandate that when the legislature employs a term other than one specifically defined, the implicit intent is that the undefined term has a different meaning.”) (*citing State v. Leopard*, 349 S.C. 467, 472-73, 563 S.E.2d 342, 345 (Ct. App. 2002) for 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.”); *see also* M.P. Zoning Code. § 156.007 (defining “YARD, FRONT. A yard situated between the front building line and the front lot line extending

the full width of the lot”) and (“YARD, REAR. A yard situated between the rear building line and rear lot line and extending the full width of a lot.)

Simply put, a reasonable interpretation of the ordinance does not permit the setbacks to be located based on building orientation. This is consistent with a prior interpretation of the Town’s ordinance by the Circuit Court which has held the Town’s decision to fix the front vs. rear yard setbacks based on a lot’s orientation to the surrounding streets was unreasonable. *See Shem Creek Development Group, LLC v. Town of Mount Pleasant*, 2017-CP-10-05493, Murphy, J. (Order filed July 13, 2020). In that case, there was a dispute over the location of the front vs. rear yard setback. *Id.* The Town refused to apply the “rear yard” setback to the boundary that was adjacent to a street even though this resulted in decreasing the buildable area. *Id.* at ¶ 67; *see also id.* at ¶66 (finding the Town’s decision “reduced the buildable area of the project site.”). Pointing out that the definition of “rear yard” contained “no prohibition on the lot adjoining a [] street” the Circuit Court correctly found the Town “fail[ed] to apply reasonable interpretations of the zoning code” *Id.* at ¶67 (also stating “it would have been entirely reasonable for [the Town] to . . . apply a rear setback [] on [the] street” where “this interpretation alone would have increased the total [buildable area]”).²

For the same reason that fixing the front vs. rear setbacks based on lot orientation was unreasonable in *Shem Creek (supra)*, it is equally improper to locate the front vs. rear yard setbacks based on building orientation. Here, the BZA did both, basing the location of the front vs. rear yard on the orientation of the building and the orientation of the Lot to Whilden Street. *See* (R. p.18). Whether the BZA was factually correct in finding the East side of the *house* to be the front is

² Although the Town has appealed this order on other grounds, it has not specifically appealed this interpretation of the ordinance. *See* Appellate Case No. 2021-000501.

immaterial. The problem is that the BZA took the orientation of the Lot and house into consideration to begin with — particularly when to do so resulted in a decrease of Buildable Area.

Therefore, this Court should not be fooled by Respondents’ mischaracterization. This appeal is not about the front of the *house*. The issue here is one of law, not one of architecture.³

B. Respondents’ summary presumption that the orientation and Buildable Area requirements do not apply to determining the location of the front and rear setbacks is both illogical and inconsistent with the plain language of the ordinance.

Respondents’ attempt to mischaracterize Owner’s argument discussed above is more than simply semantic. It is a subtle yet calculated subterfuge to distract this Court from the fact that there is no logical support for their claim that the requirements for the BZA to ignore orientation and maximize Buildable Area “do not apply to determining the front vs. the rear of the [Lot].” (Resp. Br. p. 5).

Contrary to Respondents’ suggestion, the question of the location of the front vs. rear of Lot is not distinct from the question concerning the location of the front vs. rear yard Setbacks. Nor is the question of front vs. rear of the Lot different from the question concerning the location of the Building Line. No matter how it is phrased, the question is the same: Where, on the Lot is construction permitted vs. where is construction prohibited? Respondents are simply playing word

³ Respondents rely on the “common sense understanding” of the “front of a property” and the front of the existing home. (Resp. Br. p. 6). While “common” parlance may suggest the yard outside one’s front door is the “front yard,” this ignores that the ordinance specifically defines Front Yard, Rear Yard, Building Line, and Setback for the purposes relevant here. The point, which is fundamentally lost to both Respondents and the BZA, is that what the common man may call the front door, could open onto what the ordinance defines as the rear or side yard. What may be the “back yard” for weekend BBQ plans, might be the front or side yard in the eyes of the ordinance. The very reason the ordinance (like any other law) provides specific definitions is to avoid the discrepancies and ambiguity of “common” parlance. *See*, M.P. Zoning Code. § 156.007 (“For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. For any terms not defined herein, the applicable definition from Black’s Law Dictionary shall be used.”); *accord Shem Creek, (supra)*.

games which, in the end, has no effect on the analysis. Under the ordinance, construction cannot exceed the Building Line, which demarks the applicable Setback. Therefore, whether Owner is permitted to build the planned extension — at 16.5’ from the East boundary — turns on whether the Building Line is setback 15’ (*i.e.*, the front yard Setback) or 25’ (*i.e.*, the rear yard Setback) from the East boundary. Plainly the BZA’s decision that the East side of the Lot is the rear had the effect of fixing the Building Line 25’ (rather than 15’) from the East boundary in order to accommodate the 25’ rear yard Setback. Therefore, Respondents’ claim that deciding front vs. rear of the Lot does not implicate the provisions concerning Building Line and Setback is simply illogical.

Obviously, Respondents cannot dispute that in defining “Building Line” and “Setback” the plain language of the Ordinance directs: “Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), both regardless of lot and building orientation so as to provide the greatest amount of buildable area.” M.P. Zoning Code. § 156.007. The law commands these requirements concerning orientation and Buildable Area must be interpreted to have some meaning and effect. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (“[W]e must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous [because] the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.”) (internal quotations and citations omitted); *Lawrence v. Gen. Panel Corp.*, 425 S.C. 398, 402, 822 S.E.2d 800, 802 (2019) (“[T]he Court should seek a construction that gives effect to **every word** of a statute.”) (emphasis added).

Respondents’ summary presumption that the orientation and Buildable Area requirements “do not apply” here naturally begs the question: When do these requirements apply? To this, all

Respondents can muster is the single conclusory statement that these requirements “apply only to two determinations: what lot lines are the shorter width (front/rear) and what lot lines are the longer length (sides).” (Resp. Br. p. 5). However, there are several reasons this assumption makes no sense.

First, Respondents overlook that Lot Depth (the longer dimension) and Lot Width (the shorter dimension) are separately defined in the ordinance. *See* M.P. Zoning Code. § 156.007 at (“LOT DEPTH. The average horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines”) *and* (“LOT WIDTH. The distance between side lot lines as measured at the building line.”). If the orientation and Buildable Area requirements were limited only to a determination of depth vs. width, one would expect these requirements would appear in the definitions of Lot Depth or Lot Width rather than in the definition of Building Line and Setback. But that is not the case. *See id.* (defining Lot Depth and Lot Width without reference to these requirements).

Further, and not coincidentally, Lot Width—the shorter dimension on which the front and rear yards are to be located — is measured at the Building Line. *See* M.P. Zoning Code. § 156.007 at (“LOT WIDTH. The distance between side lot lines as **measured at the building line.**”) (emphasis added). Thus, by definition, **the Lot Width requires the Building Line be determined first, not the other way around** as Respondents’ position would assume. Plainly, by including the orientation and Buildable Area requirements in the statutory definition of Building Line and Setback, the Town intended these requirements to apply to decisions that affect the Building Line and Setback. The decision of which dimension is longer vs. shorter does not affect the Building Line and Setback. Therefore, Respondents’ claim that the orientation and Buildable Area requirements only apply when distinguishing the longer from the shorter dimension is inconsistent

with the ordinance. *See Hughes*, 386 S.C. at 647, 689 S.E.2d at 641 (“Statutes must be read as a whole and sections that are part of the same statutory scheme must be construed together.”) *citing Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).

Respondents’ claim that the orientation and Buildable Area requirements only constrain the BZA when distinguishing the longer from the shorter dimension (rather than when distinguishing the front yard from the rear yard for Setbacks purposes) completely ignores that these requirements are contained in a sentence that explicitly begins with the words: “**Front and rear yards should be located** along the width of the lot (shorter dimension) . . .” M.P. Zoning Code. § 156.007 (emphasis added). This sentence indisputably speaks to the “location” of the front and rear yards, which was precisely the issue before the BZA. *See* (R. p. 18) (stating “The actual front yard of 15 feet allowed by § 156.315E.1, in our opinion, would be the [West] side.”). Because the issue before the BZA was the location of the front yard, it follows that the statutory requirements regarding orientation and Buildable Area — which are set out in a sentence that explicitly addresses where “[f]ront and rear yards should be located” — were applicable here. Therefore, Respondents’ claim that the BZA was not obligated to follow these requirements should be rejected.

Still, there is more. Respondents’ assertion that the orientation and Buildable Area requirements only apply when determining the longer vs. shorter dimension would render the requirement to maximize Buildable Area meaningless. Under the ordinance, the Setback for the front, rear, and side yards, are all excluded from the Buildable Area. *See supra* (definition of Buildable Area). Accordingly, the Buildable Area of the Lot can neither be known nor effected by simply distinguishing the longer from the shorter dimension. It is only by identifying the location of the Building Line and Setback for the front and rear yards that the Buildable Area could possibly

be established or effected. Simply put, deciding the longer vs. shorter dimension is a purely objective exercise, and there is no way to make this decision in a way that either increases or decreases Buildable Area. Accordingly, there would be no reason for the ordinance to include a mandate to “provide the greatest amount of Buildable Area” if this section was only intended to apply when distinguishing length vs. width as Respondents claim. Because there is no way for the BZA to decide the question of length vs. width in a manner that “provide[s] the greatest amount of Buildable Area” Respondents’ interpretation would render this language of the ordinance meaningless surplusage, and should therefore be rejected. *See Lemmons*, 431 S.C. at 197, 847 S.E.2d at 477 (A court “must read the statute so that no *word*, clause, sentence, provision or part shall be rendered *surplusage*, or *superfluous*, for [legislature] obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.”) (emphasis original) (internal quotations omitted); *Lawrence*, 425 S.C. at 402, 822 S.E.2d at 802 (“[T]he Court should seek a construction that gives effect to **every word** of a statute.”) (emphasis added).⁴

⁴ Although not specifically articulated, it seems that Respondents’ argument is premised upon an assumption that the ordinance’s use of the word “both” relates to the longer and shorter dimensions which are mentioned only parenthetically. However, this ignores the structure of the sentence, which consists of three separate clauses and reads:

“Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), *both* regardless of lot and building orientation so as to provide the greatest amount of buildable area.”

M.P. Zoning Code. § 156.007. (*italics for identification*).

The subject of the first clause of this sentence is the location of front and rear yards; the subject of the second clause is the location of the side yards; and finally, the third clause provides requirements constraining “both” of the preceding clauses. The word “both” at the beginning of the third clause operates to make this clause applicable to “both” of the preceding clauses — *i.e.*, the sentence could be restated as requiring both: (1) Front and rear yards should be located along the width of the lot (shorter dimension), regardless of lot and building orientation so as to provide the greatest buildable area; and (2) Side yards should be located along the length of the lot (longer dimension) regardless of lot and building orientation so as to provide the greatest buildable area.

Ultimately, Respondents claim the BZA is immune from the requirements of the Ordinance when deciding the front vs. rear of the Lot, but claim “[o]nce the front and rear lot lines are identified, the Town then applies the appropriate setback distance based on the applicable zoning district.” (Resp. Br. p. 7). As explained above, this is the tail wagging the dog. The BZA’s decision of front vs. rear of the Lot dictates the location of the Building Line and Setbacks and effects the Buildable Area of the Lot. Thus, to accept Respondents’ claim that the BZA is not constrained by the orientation and Buildable Area requirements when deciding the front vs. rear of the Lot is tantamount to deleting the definition of Building Line and Setback from the Town’s Ordinance. Further, if the BZA can make this end run around the requirements of § 156.007, then it begs the question: What other sections of the law can the BZA ignore?

For these reasons, this Court should reject Respondents’ arguments and reverse the BZA’s order.

II. Respondents misstate the purpose of the SR2-OD and incorrectly assert the BZA’s decision is consistent with this purported purpose.

Section 156.315(A) of the Town’s Ordinance provides:

The purpose of the [SR2-OD] district is to allow for the continued construction, addition to, and renovation of homes located in the older, built out neighborhoods between Coleman Boulevard and the Historic District, by creating a special overlay zoning classification with flexible yard requirements. This will lead to an enhanced streetscape and a pedestrian-friendly environment.

M.P. Zoning Code § 156.315 (A).

On appeal, Owner argues the BZA’s ruling is inconsistent with the stated purpose of the SR2-OD to allow for continued construction, addition to, and renovation of homes by creating flexible yard requirements. However, Respondents audaciously claim the things listed in the sentence — which begins “**The purpose of the district is . . .**” — are not the purpose of the SR2-

OD district. *Id.* Instead, Respondents incorrectly assert the purpose “is to create [an] enhanced streetscape and pedestrian friendly environment.” (Resp. Br. 9).

The purpose of the district is precisely what the ordinance states “[t]he purpose of the district is[.]” *Id.* This includes “to allow continued construction **and addition to**” the home in the district. *Id.* The ordinance could not possibly have used more unambiguous language to express its purpose. How Respondents can claim the purpose to be anything other than what is so clearly stated is befuddling. While Owner acknowledges the enhancement of the streetscape referenced in a subsequent sentence might be the anticipated public policy benefit to result from implementing the district’s stated purpose, this does not change the plain language of the ordinance. Respondents are conflating the means with the end.

Nonetheless, even if enhancement of the streetscape were the purpose of the district, this would only bolster Owner’s assertion that the BZA’s decision is inconsistent with the purpose. Even Respondents concede that Owner’s Lot does not boarder a public street, and that the East end of the property — where the extension is proposed — is furthest opposite the access street. (Resp. Br. pp. 3-4). As such, the BZA’s decision to deny Owner’s extension does absolutely nothing to enhance the streetscape. The house is simply not part of the streetscape, nor is it accessible to pedestrians.⁵ Thus, Respondents’ claim that the BZA’s decision is consistent with the purported purpose of the district has no legs.

Respondents close by making several unsubstantiated claims about why their interpretation serves the purpose of the district better than Owner’s interpretation. For example, Respondents claim that if the BZA had to follow the plain language of the law, it would “cause houses

⁵ See (App. Br. pp. 3-5) (providing a detailed explanation and discussion of the Lot’s location and characteristics).

throughout the [SR2-OD] to be facing different directions with no homogeneity or uniformity, which would defeat the enhanced street scape purpose.” (Resp. Br. p. 9). However, there are many problems with this assertion. Most importantly, homogeneity is not the purpose of the SR2-OD. In fact, the house at issue here is a prime example of the fact that the houses in the SR2-OD are already facing different directions.⁶

When the Town’s Zoning Ordinance is reviewed in full, it becomes even more apparent that the purpose of the Building Line and Setback provisions is not homogeneity. To the contrary, the ordinance affords the means to obtain homogeneity by providing for a BUILD-TO LINE. *See* M.P. Zoning Code. § 156.007 (“BUILD-TO LINE. The line at which construction of a building façade is to occur on a parcel. A BUILD-TO LINE runs parallel to the street right-of-way and **is established to create a generally consistent building line along a street.**”) (emphasis added). Unfortunately for Respondents, this case concerns the Building Line, not a Build-To Line. The Lot in question here is not subject to a Build-To Line, nor was the Build-To Line implicated in the question before the BZA.

Finally, Respondents claim that because the ordinances apply “Town wide” to accept Owner’s interpretation would “end the Town’s ability to designate front vs. rear of the property based on which side faces the street and/or primary façade of the home.” (Resp. Br. pp. 9-10).

⁶ Even the BZA’s own Order makes clear that homogeneity is neither the purpose nor the goal of the SR2-OD or the statutory scheme concerning Building Line and Setbacks. For example, in its Order the BZA states that “If the longer dimension was on the street and the shorter dimension was the lot depth from the street then the front and rear setbacks would still be applied to the [] shorter dimension.” (R. p. 18). This means, that in such a case, the setback applicable to the boundary adjacent to the street would be the 10’ side yard setback. Under Respondents’ reasoning, the owner of such a lot would be able to construct a side façade of the house a mere 10’ from the street, while the neighbors would have homes with front façades setback 15’ from the street. Obviously, the BZA recognizes no requirement for homogeneity in the relevant portions of the ordinance.

However, and as an initial point, there is no basis for Respondents’ claim that this ruling would apply “Town wide.” To the contrary, the issue in this case arises only by virtue of the fact that the Lot is located in the SR2-OD (where the front and rear yard setbacks are different) **and** that the Lot is uniquely shaped such that front and rear lot lines are of differing length. If the front and rear yard setback requirements for the Lot were the same (as they are in all of the Town’s other low-density residential zoning districts) the issue here would not have arisen. *See* M.P. Zoning Code. § 156.303 (Both the RR and R-1 districts have front and rear yard setbacks of 30’ each; the R-2 district has front and rear yard setbacks of 25’ each; the R-3 district has front and rear yard setbacks of 20’ each).⁷ Thus, Respondents’ claim of Town wide calamity is nothing more than colorful rhetoric without substance.

Second, Respondents’ reasoning that Owner’s interpretation would “end the Town’s ability to designate front vs. rear of the property based on which side faces the street and/or primary façade of the home” is fatally circular — assuming the Town had this ability to begin with. If Owner’s interpretation is correct (which it is) it follows that the Town never had this ability. *Accord Shem Creek*, 2017-CP-10-05493, (Murphy, J. holding that fixing the location of front vs. rear yard setbacks based on lot orientation to the surrounding street was not a reasonable interpretation of the ordinance). Accepting Owner’s interpretation would not end the BZA’s ability to designate front vs. rear based on the façade of the building. The BZA’s ability to do this ended when the Town Council enacted a Zoning Ordinance that mandates the Building Line and Setback be fixed “regardless of lot or building orientation” as discussed (over and over again) above.

⁷ The Town’s R-4 “medium density” district is the only residential zoning district that has disproportionate front and rear yard setbacks at 4’ and 20’ accordingly. *See* M.P. Zoning Code. § 156.303. However, there is no stated purpose for continued construction, addition to, and renovations of the homes in the R-4 district.

At bottom, if the plain language of the ordinance does not achieve the results the BZA desires, then it should encourage the Town Council to amend the Zoning Ordinance. Until then, this Court must interpret and apply the Town's laws as written. Respondents' request to have this Court re-write the Town's ordinance to suit the BZA's desires should not stand. *See e.g., Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964) ("the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced . . . is judicial legislation, forbidden by" the law).

CONCLUSION

For the reasons stated above, together with those set out in Appellant's Brief, this Court should reverse the BZA's ruling and direct that the plain language of the Town's Ordinances only requires the Building Line be setback 15' from the Lot's East boundary.

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2022-000392

Wolfe Marie Vernon Trust,

Appellant,

v.

The Town of Mount Pleasant and The Mount Pleasant Board of Zoning Appeals, Respondents.

CERTIFICATION OF COUNSEL

The undersigned certifies that the enclosed complies with Rule 211, SCACR.

Respectfully submitted,

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RECEIVED
Jan 03 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No.: 2022-000392

RECEIVED

Jan 03 2023

SC Court of Appeals

Wolf Marie Vernon Trust,

Appellant,

v.

The Town of Mount Pleasant and The Mount Pleasant Board of Zoning Appeals, Respondents.

PROOF OF SERVICE

The undersigned certifies that she served a copy of the foregoing **Reply Brief of Appellant and Certification of Counsel** to all counsel of record on January 3, 2023, by mailing a copy of the same, electronically or with proper postage affixed thereto, as follows:

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2022-000392

RECEIVED

Dec 14 2022

SC Court of Appeals

Wolfe Marie Vernon Trust,

Appellant,

v.

The Town of Mount Pleasant and The Mount Pleasant Board of Zoning Appeals, Respondents.

RECORD ON APPEAL

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¹ Respondents’ Memo in Opposition to Appeal to Circuit Court is not part of the Record on Appeal.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1000785

Wolfe Marie Vernon Trust Is The
PLAINTIFF(S)

Board Of Zoning Appeals Is Mount Pleasant The et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Appellant's appeal from the Mount Pleasant Zoning Board is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/10/2022 .

Mount Pleasant Town Of The for Mount Pleasant Town Of The
Board Of Zoning Appeals Is Mount Pleasant The for Board Of Zoning Appeals Is Mount Pleasant The
Mount Pleasant Town Of The for Mount Pleasant Town Of The
Board Of Zoning Appeals Is Mount Pleasant The for Board Of Zoning Appeals Is Mount Pleasant The

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Charleston Common Pleas

Case Caption: Wolfe Marie Vernon Trust Is The VS Board Of Zoning Appeals Is
Mount Pleasant The , defendant, et al
Case Number: 2021CP1000785
Type: Order/Electronic Form 4

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2022-01-10 15:40:20 page 3 of 3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	Civil Action No.:2021-CP-10-0785
<i>In Re: 520 Whilden St.</i>	)	
<i>in which,</i>	)	
	)	
The Wolf Marie Vernon Trust is,	)	
	)	
Petitioner,	)	
	)	
vs.	)	ORDER
	)	
	)	
The Town of Mount Pleasant, and the	)	
Mount Pleasant Board of Zoning Appeals is,	)	
	)	
Respondent.	)	

This matter is before the Court pursuant to Rule 59 (e) SCRCP. The Plaintiff seeks an Order of this Court amending or altering its Order of January 10, 2022.

Pursuant to Rule 59 (f) SCRCP, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of the Petitioner, this Court has determined that its original Order dated January 10, 2022 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.

AND IT IS SO ORDERED.

Manning, South Carolina

Dated: _____

R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit



Charleston Common Pleas

Case Caption: Wolfe Marie Vernon Trust Is The VS Board Of Zoning Appeals Is
Mount Pleasant The , defendant, et al
Case Number: 2021CP1000785
Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2022-03-21 09:22:43 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

)
)
)
In Re: 520 Whilden St.
)
in which,

)
)
)
The Wolfe Marie Vernon Trust is,

)
)
)
The Appellant.

)
)
)
and

)
)
)
The Town of Mount Pleasant, and the Mount
Pleasant Board of Zoning Appeals is,

)
)
)
The Respondent.
)

NOTICE OF APPEAL
(S.C. Code Ann. § 6-29-820(A))

**From the Mt. Pleasant Board of
Zoning Appeals Case No. A-2-2021**

TAKE NOTICE, that Appellant, as the owner of 520 Whilden Street¹ (the “Lot”), pursuant to S.C. Code Ann. § 6-29-710, *et seq.*, herein appeals the Final Order (the “Order”) issued by the Town of Mount Pleasant’s Board of Zoning Appeals (“BZA”), on January 25, 2021. This Order being attached hereto as **Exhibit A**. For the reasons stated, together with the arguments and exhibits as may be additionally presented at a hearing, this Honorable Court should reverse.

JURISDICTION

This Court has appellate jurisdiction pursuant to S.C. Code Ann. § 6-29-820(A); and this appeal is timely pursuant to S.C. Code Ann. § 6-29-820(B) (i.e., within thirty (30) days).

INTRODUCTION

This matter concerns the interpretation of Section 156.007 of the Town’s Zoning Ordinances which defines the “front” and “back” of a lot for setback purposes. The BZA determined the Lot’s longer East boundary was the “back,” and thus subject to a 25’ backyard

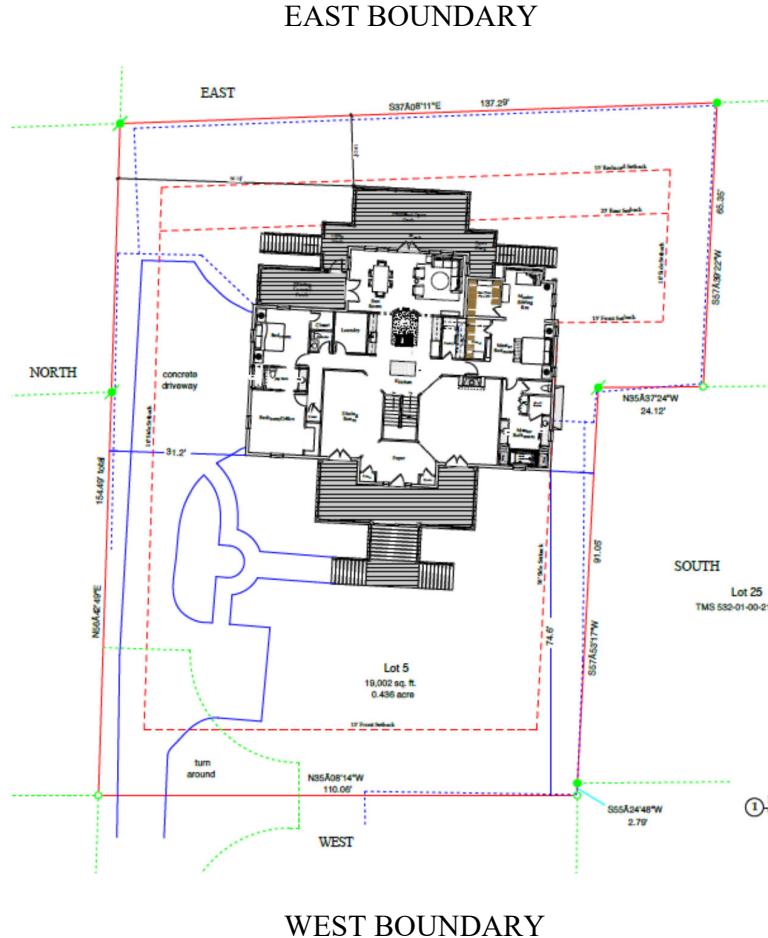
¹ More specifically known by TMS No. 532-01-00-271; and described in the deed recorded with the Charleston County Register of Deeds at Book 0776, Page 902.

setback, rather than the smaller 15' front yard setback. The BZA's decision was premised upon the orientation of the Lot and the house, and had the effect of reducing the buildable area of the Lot to a greater extent than had the East boundary been determined to be the "front." Because Section 156.007 explicitly requires this determination be made "**regardless of lot and building orientation so as to provide the greatest amount of buildable area**", the BZA's ruling is contrary to the plain language of the statute. This constitutes an error of law and requires reversal.

FACTUAL BACKGROUND

Appellant acquired the Lot in February of 2019, and at the time there was already a house (the "House") on the Lot. Pursuant to the Special R-2 Overlay Zoning District ("SR2-OD"), the Lot is subject to a "front yard" setback of fifteen feet (15') and a "back yard" setback of twenty-five feet (25'). *See* Zoning Ord. §156.315 (front setback of 15 feet for "SR2-OD"); Zoning Ord. § 156.303 (rear setback of 25 feet for zoning district R-2).

Importantly, the Lot is unique in two aspects. First, it is entirely landlocked in that it does not border a public street. Instead, it is accessible only by means of a private shared driveway which provides access to other landlocked lots on the block. Second, the Lot is uniquely shaped in that the East boundary, at 137.29', is longer than the West boundary, which is only 110.06' in length. (*See* Fig. 1 below). This is important because application of the larger 25' backyard setback (rather than the 15' front yard setback) to the longer East boundary reduced the buildable area of the Lot in violation of Section 156.007.

Fig. 1

PROCEDURAL HISTORY

Appellant wanted to add a porch to the eastern side of the house, however, on November 20, 2020, the Town's Planning and Development Department (the "Department") issued a determination, *via* email, that the East boundary would be considered the back and the West boundary would be considered the front. See **Exhibit B**, (Appellant's memorandum and exhibits submitted to the BZA). Appellant timely appealed the Department's decision to the BZA, arguing that the Department's decision was contrary to the plain language of Section 156.007 and inconsistent with the purpose for which the SR2-OD was created. See **Exhibit B**. A hearing was

held on January 25, 2021, and the BZA issued a written order the same day, which was mailed to the parties on January 26, 2021. (**Exhibit A**).²

THE CONTROLLING ORDINANCES & THE BZA’S ORDER

The BZA determined this issue is controlled by the following portion of Section 156.007 of the Zoning Ordinance:

BUILDING LINE (includes *SETBACK*). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), **both regardless of lot and building orientation so as to provide the greatest amount of buildable area.**

Zoning Ord. § 156.007 (emphasis added).

In its Order, the BZA additionally cites Section 156.315(E)(1) which concerns the SR2-OD and provides:

(E) *Lot, yard, height, and coverage requirements.* Development standards for SR2-OD shall be in accordance with the Residential Development Guidelines Table in § [156.303](#).

(1) *Minimum yard requirements.*
Front yard 15 feet

Zoning Ord. § 156.315(E)(1) (italics original).

In its Order, the BZA acknowledges that Section 156.007 dictates that the determination must be made “regardless of lot and building orientation” and acknowledges “the setbacks [are established] based on the lot dimensions, not lot or building orientation.” (Order p. 3).

² The caption of the Order misidentifies the owner and address of the subject property. Further it notes in the footer to be an “Order on Request for Variance” rather than an appeal from the decision of administrative official pursuant to Zoning Ord. § 156.411(A)(1). However, these typographical errors do not appear to affect the substance of the BZA’s Order.

Confoundingly however, it is precisely the lot and building orientation on which the BZA relies holding: “the actual front yard of 15 feet allowed by [§] 156.315 (E)(1), in our opinion, would be . . . the access easement side or primary façade of the principal structure designed as the ‘front.’” (Order p. 3). Further, the BZA ignores entirely that its finding decreases the buildable area, rather than increasing it as required by the ordinance. *See* Zoning Ord. § 156.007 (stating the determination should be made “so as to provide the greatest amount of buildable area”). This is reversible error.

ISSUE ON APPEAL

Where Section 156.007 of the Town’s Zoning Ordinance requires the determination of the front and back building lines be made “regardless of lot and building orientation [and] so as to provide the greatest amount of buildable area,” did the BZA err in determining the building lines based on lot and building orientation and in a manner that provides the least buildable area?

STANDARD OF REVIEW

“[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review” and are subject to the same rules which apply to the interpretation of a statute. *Eagle Container LLC v. County of Newberry*, 379 S.C. 564, 666 S.E.2d 892 (2008); *see also Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009) (interpreting an ordinance); *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8, 776 S.E.2d 753, 757 (Ct. App. 2015) (affirming the circuit court’s reversal of a Board of Zoning Appeals’ interpretation of an ordinance). “Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below.” *CFRE, L.L.C. v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

ARGUMENT

I. The BZA’s Ruling is Inconsistent with the Plain Language of Section 156.007.

“When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used.” *Helicopter Sols.*, 414 S.C. at 10, 776 S.E.2d at 758 (quoting *Mikell*, 386 S.C. at 160, 687 S.E.2d at 330); quoting *Charleston Cty. Parks & Recreation Comm’n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). A court must “read the statute *as a whole* and in a manner consonant and in harmony with its purpose [and i]n that vein, [it] must read the statute so that no *word*, clause, sentence, provision or part shall be rendered *surplusage*, or *superfluous*, for [legislature] obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.” *Lemmons v. Maced. Water Works, Inc.*, 431 S.C. 186, 197, 847 S.E.2d 471, 477 (Ct. App. 2020) (emphasis original) (internal quotations omitted); see also *Olds v. City of Goose Creek*, 424 S.C. 240, 251, 818 S.E.2d 5, 11 (2018) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”).

Here, the BZA’s ruling contradicts the plain language of Section 156.007 because: (A) its decision does not “provide the greatest amount of buildable area;” and (B) the BZA failed to make its determination “regardless of lot and building orientation.” See Zoning Ord. § 156.007.

A. The BZA’s Order is Contrary to the Requirement of Section 156.007 that Buildable Area Be Increased.

Section 156.007 plainly requires the determination to be made “so as to provide the greatest amount of buildable area.” Zoning Ord. §156.007. “Buildable Area” is defined as “[t]he maximum two-dimensional space on a lot within which a structure or structures can be built, as permitted by applicable setback[.]” Zoning Ord. §156.007. In other words, total lot area minus setback area.

There is no dispute that the North and South boundaries are subject to a side setback of ten (10) feet. The question then becomes, as between the East and West boundaries which is the front, and which is the back? Because “buildable area” is the total area of the Lot minus the setback areas, it becomes significant that the East boundary - at 137.29’ in length - is longer than the West boundary which measures only 110.06’. Thus, simple geometry demonstrates that applying the smaller front setback (i.e., 15’) to the East boundary provides more buildable area than applying the larger back setback (i.e., 25’) as the BZA did. Thus, the BZA’s ruling did exactly the opposite of what is required by the plain language of the ordinance. *Id.*³

Only by applying the front yard setback to the East boundary can the command to “provide the greatest amount of buildable area” be satisfied. The BZA’s ruling completely ignores this plain and explicit requirement. This is an error of law. *See e.g., Lemmons*, 431 S.C. at 197, 847 S.E.2d at 477 (confirming that when interpreting and applying an ordinance “that no word, clause, sentence, provision or part be rendered *surplusage*, or *superfluous*, for [legislature] obviously intended the statute to have some efficacy”). Had the Legislature intended a different means of identifying the building lines it would have stated as much. *See Taylor v. S.C. DMV*, 382 S.C. 567, 570, 677 S.E.2d 588, 590 (2009) (“if [the] Legislature had intended [a] certain result in a statute it would have said so”) (citation omitted); *see also State v. Zulfer*, 345 S.C. 258, 262-63,

³ Because the side setbacks are the same on both sides, the BZA’s error is illustrated by comparing the total front and back setback area produced by treating the East boundary as the back versus treating the East boundary as the front. Under the BZA’s interpretation which applies the 25’ backyard setback to the East boundary, the backyard setback area is 3,432.24 sq. ft. (i.e., 137.29’ x 25’ = 3,432.24’ sq.); the front yard setback area on the West boundary is 1,650.0 sq. ft. (i.e., 110.06’ x 15’ = 1,650.0’ sq.); and thus, the total front and back setback area is 5,083.15 sq. ft. (i.e., 3,432.24’ + 1,650.0’ = 5,083.15’ sq.). On the other hand, if the 10’ front yard setback is applied to the East boundary instead, there would be a front set back of 2,059.35’ sq., leaving a backyard setback area on the West boundary of 2,7151.5’ sq., for a total front and back setback area of 4,810.85 sq. ft.

547 S.E.2d 885, 887 (Ct. App. 2001) (“[H]ad the legislature intended [a statute to produce a certain result] it could easily have limited the statute [accordingly].”).

B. The BZA’s Finding is Specifically Based on the Orientation of the Lot and the House Which is Also Contrary to the Plain Language of the Ordinance.

Section 156.007 requires that the determination of the building lines be made “regardless of lot and building orientation.” However, lot and building orientation is precisely what the BZA based its decision on, reasoning that “the actual front yard of 15 feet allowed by [§] 156.315 (E)(1), in our opinion, would be . . . the access easement side or primary façade of the principal structure designed as the ‘front.’” (Order p. 3). As a threshold matter, because the requirements for establishment of building lines under Section 156.007 is clear and unambiguous, the BZA should not have sought to justify its finding by reference to other sections of the Code. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning.”); *see also, Mikell*, 386 S.C. at 160, 687 S.E.2d at 330 (“When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used.”).

Regardless, to the extent the BZA’s finding suggests that directive for determining building lines under Section 156.007 are ambiguous, or that Section 156.315 (E)(1) alters the provisions of Section 156.007, to permit the determination of building lines be made based on lot or building orientation, is an error of law. *See, Hughes v. W. Carolina Reg'l Sewer Auth.*, 386 S.C. 641, 647, 689 S.E.2d 638, 641 (Ct. App. 2010) (“Statutes must be read as a whole and sections that are part of the same statutory scheme must be construed together.”).

The BZA’s decision is also inconsistent with the purpose for which the Town created the SR2-OD. *See Lemmons*, 431 S.C. at 197, 847 S.E.2d at 477 (requiring a court to “read the

statute as a whole and in a manner consonant and in harmony with its purpose”). Specifically, the Town created the SR2-OD to, among other things, “allow for the continued construction, addition to, and renovation of homes located [there]. . . by creating a special overlay zoning classification **with flexible yard requirements.**” Zoning Ord. §156.310(A) (emphasis added). In serving this objective, Section 156.310 (E)(1) creates a minimum “front yard” requirement of fifteen (15) feet. While the BZA seems to assume that the term “front yard” is established by reference to lot and building orientation, that is not the case. The Ordinance specifically defines “front yard” to be “a yard between the front building line and the front lot line.” Zoning Ord. § 156.007. Thus, in defining “front yard” by reference to the building line, the “front yard” like the “building line” must be determined “regardless of lot or building orientation.” *See* Zoning Ord. § 156.007 (at “Building Line”). In other words, the front building line determines the front yard, not *vice versa*.

While the Town could have passed legislation that defined “front yard” by reference to the orientation of the building - i.e., such that the front yard be considered the yard adjacent to the front façade of the building - it did not. Thus, the BZA’s ruling is inconsistent with the clear legislative intent of the Ordinance. *See Taylor*, 382 S.C. at 570, 677 S.E.2d at 590 (“if [the] Legislature had intended [a] certain result in a statute it would have said so”).

CONCLUSION

For these reasons,⁴ the BZA’s Order must be reversed and the East boundary be established as the front rather than the back of Appellant’s Lot.

[signature to follow]

⁴ Appellant incorporates those arguments presented at the BZA hearing on January 25, 2021 and reserves the right to supplement the arguments herein upon receipt of the transcript. Appellant further reserves the right of reply to any argument advanced by the Respondent.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

By: s/ TJ Rode
THOMAS J. RODE
MICHAEL A. TIMBES
15 Middle Atlantic Wharf
Charleston, South Carolina 29401
Phone: 843-937-8000
Fax: 843-937-4200
Email: thomas@tktlawyers.com
Attorneys for Plaintiff

February 18, 2021
Charleston, South Carolina



**BOARD OF ZONING APPEALS
FINAL ORDER**

Mr. Thomas Rode, Esq.
Thurmond, Kircher, & Timbes, PA
15 Mid. Atlantic Wharf
Charleston, SC 29401

Applicant

Mr. and Mrs. Jeffery Winterfield
32 Montrose Road
Mount Pleasant, SC 29464

Owner

CASE A-2-2021

**520 Whilden Street
TMS# 532-01-00-271**

Appeal of the Zoning Official's determination establishing the west boundary as the front yard. Applicant contends that the determination improperly alters the setbacks and fails to provide the greatest amount of buildable area as required by the Zoning Code and prevents an addition to residence. The applicant contends that the correct interpretation of the particular Zoning Code section is to determine that the East boundary is the "front".

The Town of Mount Pleasant Board of Zoning Appeals held a public meeting on January 25, 2021.

After consideration of the evidence and arguments presented, the board makes the following findings of fact and conclusions of law:

Law 1: § 156.411 POWERS; VARIANCES; SPECIAL EXCEPTIONS; STAYS; HEARINGS, DECISIONS AND ORDERS.

(A) *Powers.* The Board of Zoning Appeals shall have all of the powers, duties and responsibilities as set forth in S.C. Code §§ 6-29-310 through 6-29-860, as amended, unless otherwise stated herein. Specifically, the Board has the following powers:

(1) To hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;

(5) Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county.

(a) The appeal must be taken within 30 days from the date the appealing party has received actual notice of the action from which the appeal is taken, by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for appeal.

FACT 1: The applicant received an email letter from Principal Planner, Mr. Michael Robertson, on November 20, 2020, stating the rationale for determining the "Front Yard" (Exhibit 1, page 6 of PDF submittal).

FACT 2: The applicant filed an appeal of the Zoning Official's decision on December 18, 2020.

STAFF COMMENT: The appeal was filed within 30 days from the date the appealing party received actual notice of the action from which the appeal is taken by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals notice of appeal specifying the grounds for the appeal.

DETERMINATION BY ZONING OFFICIAL

1. Can the 'rear yard' be counted as the front yard? This was the initial question asked with regard to the enclosed rear porch.

156.007 Definitions

BUILDING LINE (includes **SETBACK**). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), both regardless of lot and building orientation so as to provide the greatest amount of buildable area.

156.315 SR2-OD; Special R-2 Overlay District.

(E) *Lot, yard, height, and coverage requirements.* Development standards for SR2-OD shall be in accordance with the Residential Development Guidelines Table in § 156.303.

(1) *Minimum yard requirements.*

Front yard 15 feet

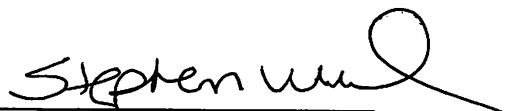
Although the definition notes that the setbacks are applied 'regardless of lot and building orientation', the phrase is used in the context of establishing the setbacks based on the lot dimensions, not lot or building orientation. If the longer dimension was on the street and the shorter dimension was the lot depth from the street, then the front and rear setbacks would still be applied to the lot on the shorter dimension. The actual front yard of 15 feet allowed by 156.315 E.1, in our opinion, would be the side from which the access to the lot is provided, in this case, the access easement side or primary façade of the principal structure designed as the 'front'.

THE BOARD, THEREFORE, ORDERS that the Appeal is denied and the decision of the Zoning Official is affirmed.


Barry Wolff, Chairman

Megan Finch-Stevens

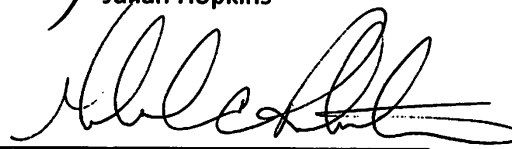

Beth Santilli


Stephen Wood


Elliott Barrow


Stephen Duke


Julian Hopkins


Secretary

Date Final Order Signed: January 25, 2021

Date mailed to parties in interest: 1-26-21

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.

EXHIBIT B

ELECTRONICALLY FILED - 2021 Feb 18 11:37 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1000785

TOWN OF MOUNT PLEASANT	)	BOARD OF ZONING APPEALS
	)	<i>TMS No. 532-01-00-271</i>
	)	
<i>in Re: 520 Whilden St.</i>	)	
	)	
in which,	)	Notice of Appeal
	)	
The Wolfe Marie Vernon Trust is,	)	
	)	
Appellant.	)	

COMES NOW the Appellant, who pursuant to S.C. Code Ann. §§ 6-29-310 *et. seq.*, and Section 156.411 of the Town of Mount Pleasant Code of Zoning Ordinances, does herein appeal the November 20, 2020, order/decision of the Planning and Development Department of the Town of Mount Pleasant, (the “Order”) and for the reasons stated herein, together with the arguments and evidence that may be presented to this Honorable Board at a hearing, shall show the Order should be reversed.

PROCEDURAL HISTORY

1. By deed recorded with the Charleston County Register of Deeds at Book 0776, Page 902, Appellant is the record owner of that certain parcel of real property commonly known as 520 Whilden Street, and more specifically known to the Charleston County Tax Assessor by TMS No. 532-01-00-271 (the “Lot”).

2. The Lot is in the Town of Mount Pleasant and in the Special R-2 Overlay Zoning District. *See* §156.315 (establishing the “SR2-OD”).

3. On November 20, 2020, The Planning and Development Department of the Town of Mount Pleasant (the “Department”), issued an order/decision *via* email, (“the Order”) which is attached hereto as **Exhibit 1**.

INTRODUCTION & QUESTION PRESENTED

The Lot is subject to a setback of fifteen (15) feet on the “front,” and twenty-five (25) feet from the “back.” *See* Ord. § 156.303 (rear setback of 25 feet for zoning district R-2) & §156.315 (front setback of 15 feet for the Special R-2 Overlay District –“SROD-R-2”).

Owner is planning an addition to the East side of the residence on the Lot, which would extend, at its nearest point, to be 16’2 ¾” from the East Lot Line.¹ *See* (**Exhibit 2** at p. 2). Although the residence is oriented otherwise, these plans were made to be consistent with the East side of the Lot being the “front” (i.e., subject to a 15’ setback). However, although the Department agreed the orientation of the house was immaterial, it nonetheless applied the definition of “Building Line (includ[ing] Setback)” from §156.007 to find the East side of the Lot is the “back,” rather than the “front,” and therefore subject to the larger 25’ setback. *See* Order.

The question here is whether the East is the front or back yard pursuant to §156.007 of the Zoning Code. As articulated below, it is the front, and therefore this Honorable Board should reverse the Department’s Order.

ARGUMENT

1. The District Misinterpreted § 156.007 and Improperly *Reduced* the Buildable Area of the Lot, this being Contrary to the Plain Language of the Ordinance.

Section 156.007 of the Zoning Code provides:

BUILDING LINE (includes *SETBACK*). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), both regardless of lot and building orientation **so as to provide the greatest amount of buildable area.**

(emphasis added)

¹ *See* Ord. §156.007 (defining “Lot Line” as the legal boundary of the property).

The Department omitted from its analysis that the identification of the front and back under this section of the Ordinance should serve to provide “the greatest amount of buildable area.” *Id.* It also failed to consider that the lot and building orientation must be disregarded in establishing front and back yards in a way that will accomplish the goal of creating the greatest amount of buildable area. This makes a difference in this particular case, and therefore was error.

Here, the East boundary spans a distance of 137.29 feet while the West boundary totals a shorter 110.06 feet. Thus, because the East boundary is the longer of two, applying the 25’ backyard setback to the East side necessarily results in a greater portion of the Buildable Area of the Lot being rendered “unbuildable” than if the 15’ front yard setback were applied to the East side. *See* Ord. §156.007 (defining “Buildable Area” as: “[t]he maximum two- dimensional space on a lot within which a structure or structures can be built, as permitted by applicable setback and buffer requirements”). Under the Department’s interpretation of §156.007 in which the East side is treated as the back, the total area of front and back setbacks is 5,083.15 square-feet. Alternatively, if the East side is properly considered the front, the total area of front and back setbacks is a lesser 4,810.85 square feet.²

Therefore, in order to “provide the greatest amount of buildable area” the East side must be considered the front. *See* Ord. §156.007 (defining “building Lines”). Consequently, the Department’s finding is contrary to the plain language of the Zoning Ordinance and must be reversed. *Id.*

² The side setbacks remain 10 feet on both sides regardless of whether the East is treated as the front or back. *See* Ord. § 156.303. Moreover, even if the additional 24.12 feet of frontage created by the in the property line along the South side were considered part of the West boundary, making this boundary 134.18 feet, it would remain that the Department’s interpretation still reduces the Buildable Area to a greater degree than considering the East boundary as the front.

2. Finding the East side to be the Back is Inconsistent with the Purpose of Creating the SR2-OD.

The stated purpose for which the Town created the SR2-OD is “to allow for the continued construction, addition to, and renovation of homes located [there]. . . by creating a special overlay zoning classification **with flexible yard requirements.**” Ord. §156.310(A); *accord* §156.310(B)(3) (contemplating the creation of this overlay district would “enable homeowners to add porches as well as increased living space to homes that are currently at or over the 25-foot front yard setback required in R-2 Districts”).

Therefore, and contrary to the Department’s finding, a determination that the East boundary is the front is not only compelled by the plain language of §156.007, but is also consistent with stated purpose for which the Town created the SR2-OD in the first place.

CONCLUSION

For the reasons stated above, this Honorable Board should **reverse** the Department’s Order and find that the East boundary is the “front” with a 15’ setback.³

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

By: s/ TJ Rode
 THOMAS J. RODE SC Bar No. 77480
 15 Middle Atlantic Wharf
 Charleston, South Carolina 29401
 Phone: 843-937-8000
 Fax: 843-937-4200
 Email: thomas@tktlawyers.com
Attorneys for Plaintiff

Charleston, South Carolina

³ Owner asserts that reversal shall also operate to vacate the Department’s finding listed as “2” in the Order regarding the fireplace location to the extent it relies upon the East boundary being the back.

EXHIBIT 1Appeal re: *TMS No. 532-01-00-271*

From: Mike Robertson <MRobertson@tompsec.com>
Subject: RE: 520 Whilden Street - side setback question
Date: November 20, 2020 at 12:27:27 PM EST
To: Cintra McGauley <cintra@herlongarchitects.com>, Steve Herlong <steve@herlongarchitects.com>
Cc: Brooke Gerbracht <brooke@herlongarchitects.com>

I spoke to the Zoning Administrator and we reviewed all of the requests to date.

1. Can the 'rear yard' be counted as the front yard? This was the initial question asked with regard to the enclosed rear porch.

156.007 Definitions

BUILDING LINE (includes **SETBACK**). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), both regardless of lot and building orientation so as to provide the greatest amount of buildable area.

156.315 SR2-OD; Special R-2 Overlay District.

(E) *Lot, yard, height, and coverage requirements.* Development standards for SR2-OD shall be in accordance with the Residential Development Guidelines Table in § [156.303](#).

(1) *Minimum yard requirements.*

Front yard 15 feet

Although the definition notes that the setbacks are applied 'regardless of lot and building orientation', the phrase is used in the context of establishing the setbacks based on the lot dimensions, not lot or building orientation. If the longer dimension was on the street and the shorter dimension was the lot depth from the street, then the front and rear setbacks would still be applied to the lot on the shorter dimension. The actual front yard of 15 feet allowed by 156.315 E.1, in our opinion, would be the side from which the access to the lot is provided, in this case, the access easement side or primary façade of the principle structure designed as the 'front'.

You can appeal this decision to the Board of Zoning Appeals, Appeal of Decision of Zoning Official. You would have 30 days from the date of this email to file the appeal. You may also request a variance to allow the rear yard encroachment. There is no time constraint for requesting a variance to allow the rear yard encroachment as there is with an appeal of an administrative decision. The next regularly scheduled meeting of the Board of Zoning Appeals is January 25, 2021. The submittal date for the January 25 meeting is January 4, 2021. Submittals are made online and must be received on or before 11:59 PM.

EXHIBIT 1Appeal re: *TMS No. 532-01-00-271*

2. Can the fireplace be located on the end of the deck as shown on plan provided.

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

(A) *General.*

(3) Uncovered porches and uncovered decks may encroach into a required rear or side yard not more than 40% of the required setback, but no closer than three feet from the property line; except that when a zero-lot line provision is in effect, the 40% reduction shall apply to the minimum required distance between structures. No additional encroachments for outside stairways shall be permitted.

The uncovered deck may project into the rear yard 40% of the required setback as noted above; however, the chimney must meet the requirements of:

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

(A) *General.*

(1) Items such as but not limited to sills, eaves, belt courses, window air-conditioning units, chimneys, cornices, ornamental features, and bay windows may protrude into a required yard a distance not to exceed 24 inches; provided, however, the bay window projection is limited to maximum span length of ten feet along the exterior wall of the building.

156.107 A.1 only allows the chimney to project into a required rear yard for a distance not to exceed 24 inches.

Again, this interpretation may be appealed to the Board of Zoning Appeals or a variance may be requested. The appeal must be filed within 30 days of the date of this email. A variance may be requested at any time. The next regularly scheduled meeting of the Board of Zoning Appeals is January 25, 2021. The submittal date for the January 25 meeting is January 4, 2021. Submittals are made online and must be received on or before 11:59 PM.

3. Can the awning over the side door project into the side yard approximately four feet?

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

(A) *General.*

(2) Items such as but not limited to open fire escapes; elevators; outside stairways leading to a building entrance, but not to an uncovered porch or deck; balconies; and outside air-conditioning units and propane/heating oil tanks may be permitted to project into the required yard for a distance of not more than four feet, when so placed as to not obstruct light and ventilation, but in no case closer than three feet from the property line.

Outside stairways leading to an uncovered porch or deck may project into the required yard for a distance of not more than four feet.

(A) *General.*

EXHIBIT 1

Appeal re: *TMS No. 532-01-00-271*

(1) Items such as but not limited to sills, eaves, belt courses, window air-conditioning units, chimneys, cornices, ornamental features, and bay windows may protrude into a required yard a distance not to exceed 24 inches; provided, however, the bay window projection is limited to maximum span length of ten feet along the exterior wall of the building.

Eaves of the building may project into the required yard for a distance not to exceed twenty four inches.

If an awning is desired, it would require a variance to allow it to project and for the stairs to project into a required yard when accessing a covered porch or deck.

Again, this decision can be appealed as noted in 1 and 2 or you can request a variance at any time.

I hope this helps. I know you have studied many options to avoid pursuing a variance. As always, I'm more than happy to discuss any ideas you have in order to meet the requirements. Also, it is your right to request a variance. If you decide to pursue a variance, I'd be more than happy to review the requirements with you with regard to whichever option(s) you wish to pursue.

Do not hesitate to let me know how I can help you and your client get this resolved satisfactorily.



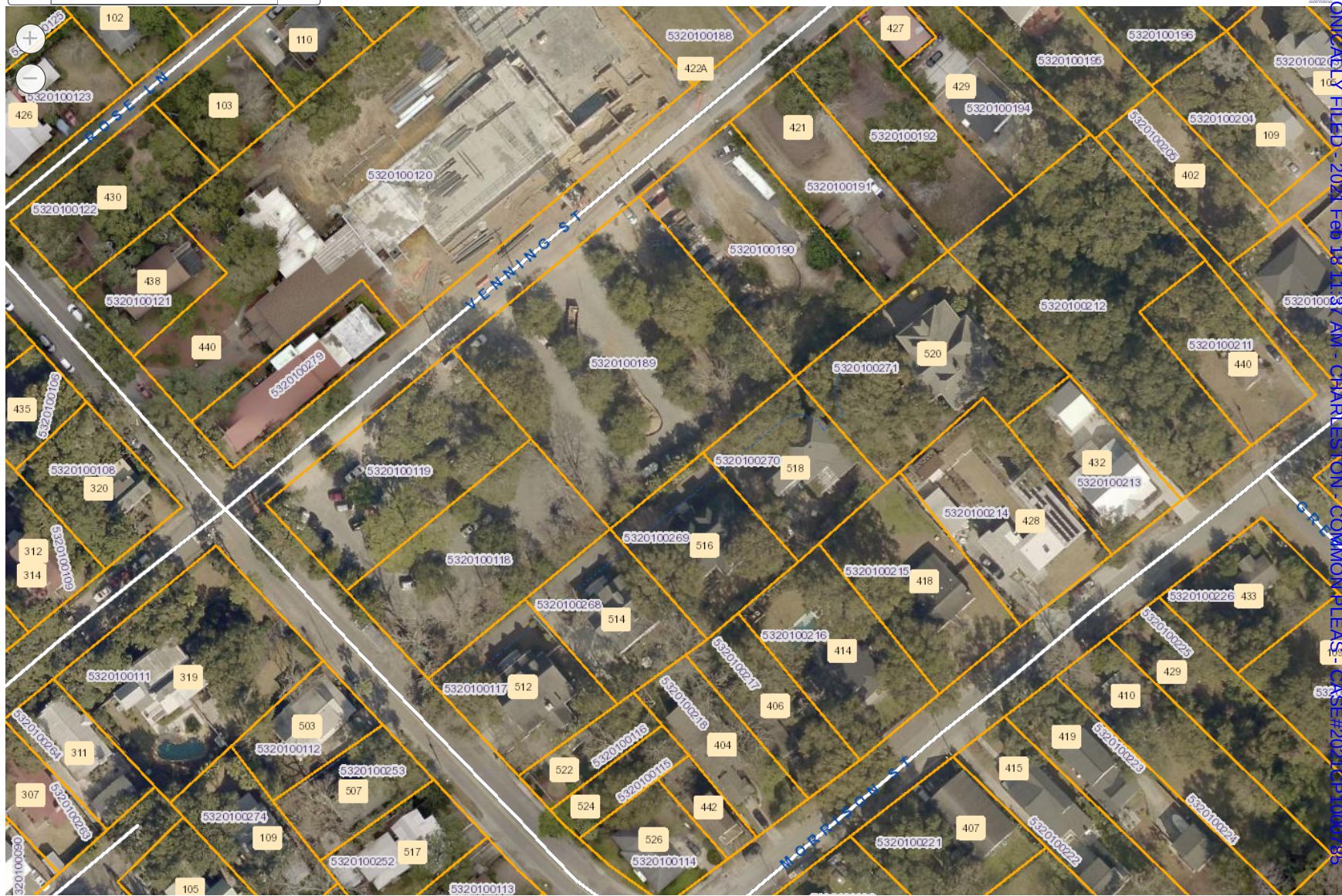
Michael C. Robertson, AICP
Principal Planner
Planning & Development Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464

mrobertson@tompsc.com
843-884-1229

P.S. We want to hear from you about how our department is doing! Please take a few minutes to complete our [online satisfaction survey](#) and give us your thoughts. Thanks!

Exhibit 2
Charleston County SC
Appeal re: TMS No. 532-01-00-271

Charleston County GIS Viewer



Charleston County GIS, Eagleview | Charleston County SC

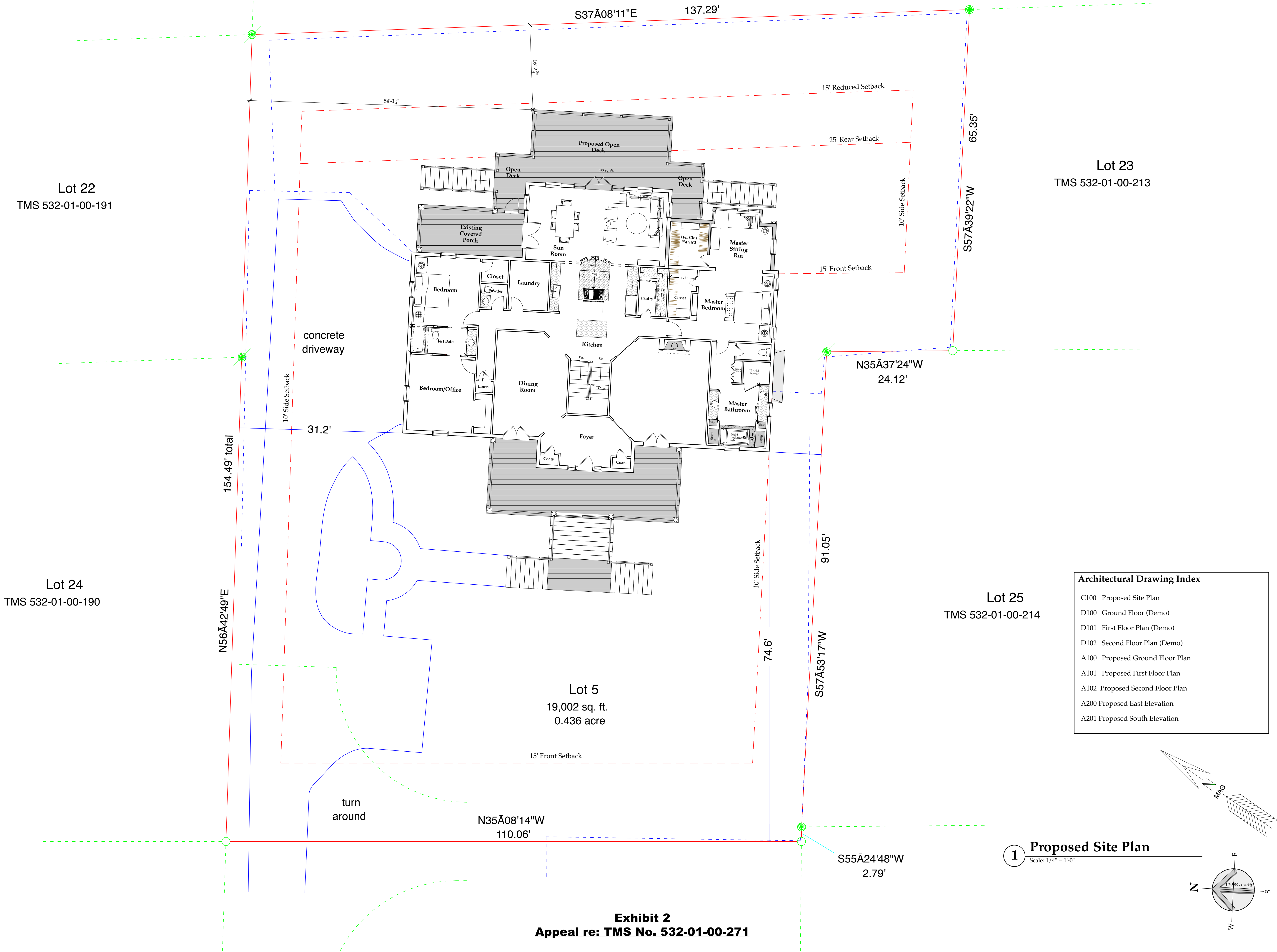
Powered by Esri

Exhibit 2
Appeal re: TMS No. 532-01-00-271

Record on Appeal 28

1/1

Exhibit 2
Appeal re: TMS No. 532-01-00-271



Architectural Drawing Index

- C100 Proposed Site Plan
- D100 Ground Floor (Demo)
- D101 First Floor Plan (Demo)
- D102 Second Floor Plan (Demo)
- A100 Proposed Ground Floor Plan
- A101 Proposed First Floor Plan
- A102 Proposed Second Floor Plan
- A200 Proposed East Elevation
- A201 Proposed South Elevation

1 Proposed Site Plan
Scale: 1/4" = 1'-0"

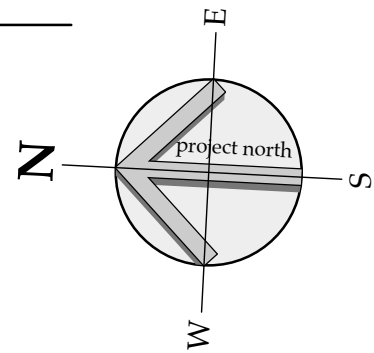


Exhibit 2
Appeal re: TMS No. 532-01-00-271

HERLONG & ASSOCIATES, INC. ARCHITECTURE INTERIORS (843) 866-9199 • herlongarchitects.com 103 Palm Blvd. • Isle of Palms, SC 29451							
Stamps							
Plot Date		12/2/20					
Project No.							
Drawn							
Drawing Title		Site Plan					
Drawing No.		C100					
Record on Appeal 29							

ELECTRONICALLY FILED 11/09/2020 11:37 AM - CHARLESTON, SOUTH CAROLINA. This drawing may not be reproduced without the consent of the Architect. This drawing may not be reproduced without the consent of the Architect.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
<i>IN RE: 520 WHILDEN ST.</i>	)	CASE NO. 2021-CP-10-00785
<i>IN WHICH,</i>	)	
	)	
THE WOLFE MARIE VERNON TRUST,	)	
	)	
THE APPELLANT,	)	
	)	
VS.	)	NOTICE OF OPPOSITION TO APPEAL
	)	AND SUBMISSION OF THE RECORD
	)	BEFORE BOARD OF ZONING APPEALS
THE TOWN OF MOUNT PLEASANT	)	
AND THE MOUNT PLEASANT	)	
BOARD OF ZONING APPEALS,	)	
	)	
THE RESPONDENTS.	)	
	)	

TO: THOMAS J. RODE, ESQ. and MICHAEL A. TIMBES, ESQ., THURMOND KIRCHNER & TIBES, P.A., ATTORNEYS FOR APPELLANT THE WOLFE MARIE VERNON TRUST.

YOU WILL PLEASE TAKE NOTICE that the Respondent, the Town of Mount Pleasant (hereinafter "Town"), and the Mount Pleasant Board of Zoning Appeals (hereinafter "BZA"), by and through the undersigned counsel, will respond in opposition to this appeal at the next term of court or as soon as counsel may be heard, and will request that this Court uphold the decision of the BZA on the grounds that the decision is correct as a matter of law. Respondent, pursuant to S.C. Code Ann. § 6-29-830(A), hereby submits a copy of the BZA's full record in this matter: (EXHIBIT A, The BZA's Final Order); (EXHIBIT B, Application of Appeal with Exhibits and documents submitted by applicant); (EXHIBIT C, Zoning Official emails constituting the Record of the Zoning Official); (EXHIBIT D, The Agenda for the BZA Hearing January 25, 2021); (EXHIBIT E, The Minutes for the BZA Hearing January 25, 2021).

Summary of Argument in Opposition

Appellant's existing home sits too close to the rear set back line of their property to build a

rear addition. Appellant, therefore, seeks to declare the back yard of their property the “front” in order to gain additional buildable area on the rear side of their lot. The Town denied Appellant’s request and the BZA affirmed. Appellant now asks this Court to overrule the BZA’s decision.

Appellant’s argument distorts the code definition of the term “Building Line” contained in Town of Mount Pleasant Ordinance provision §156.007. Appellant argues that the definition precludes the Town from declaring the front side of Appellant’s property the “front yard” because, according to the Appellant, the Town must make these orientation declarations in a manner that maximizes the property owner’s buildable area.

Appellant is wrong. The definition provision upon which Appellant’s argument relies is irrelevant to determining the “front” vs. the “rear” of the property. The definition provision at issue in no way prohibits the Town from declaring the true front as the “front” of the property. The BZA correctly affirmed the Town’s decision that the rear setback requirement applies to the “rear” of Appellant’s property, and therefore this Court should uphold the BZA’s decision.

Respondent’s opposition to this appeal will be further supported by a Memorandum in Opposition containing citation to applicable case law and statutory law authorities, which the Court may receive or require in advance of the hearing on this matter.

<<ATTORNEY SIGNATURE ON FOLLOWING PAGE>>

CLEMENT RIVERS, LLP

By: s/ Brian L. Quisenberry

Brian L. Quisenberry, Esq. S.C. Bar # 73637

E-mail: bquisenberry@ycrlaw.com

Zachary M. Kern, Esq. S.C. Bar #103731

E-mail: zkern@ycrlaw.com

P.O. Box 993, Charleston, SC 29402-0993

25 Calhoun Street, Suite 400, Charleston, SC 29401

Telephone: (843) 724-6641

Fax: (843) 579-1331

Attorneys for the Respondents

Charleston, South Carolina

Dated: March 19, 2021

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 19th day of March, 2021.

s/ Brian L. Quisenberry

EXHIBIT A

(The BZA's Final Order)

Pages of this Exhibit Omitted As Duplicative.

See BZA Order *supra*.

EXHIBIT B

**(Application of Appeal with Exhibits and Documents
Submitted by Applicant)**

Board of Zoning Appeals Appeal From Decision of Zoning Official Application

A Property Owner Acknowledgement Form must be submitted with the application.

ALL ONLINE APPLICATIONS ARE DUE BY 11:59 p.m. ON THE DEADLINE DATE. ***It is highly recommended that the property owner and/or a representative meet with staff prior to submitting an application.***

Nature of Request & Fees

Notice of Appeal from Action of a Zoning Official
\$200.00

Requirements

All supplemental information must be submitted in a single PDF file with this application.

An accurate, legible plot plan showing property dimensions and locations of structures and improvements must be attached to an application for variance or special exception.

The following supplemental information is included with this application (please list):*

Memorandum and Two Exhibits.

Please attach supplemental information outlined above:*

Appeal w Exhibits - 520 Whilden St.pdf

Applicant Information

Applicant(s)* Thurmond Kircher & Timbes, PA
Address:* 15 Mid. Atlantic Wharf, Charleston, SC 29401
Daytime Phone:* 8439378000 Email: thomas@tklawyers.com

Owner Information (if other than applicant)

Owner(s): The Wolfe Marie Vernon Trust
Address: 520 Whilden St. Mount Pleasant, SC
Daytime Phone: Email:

Property Information

Street Address:* 520 Whilden St.
Lot: Block:
Subdivision: Tax Map 532-01-00-271
No:*
Plat Book: Page:
Zoning District:* SR2-OD

Designation Information (complete only if owner is not applicant)

I (we) hereby appoint the person named as Applicant as my (our) agent to represent me (us) in this application.

Date: 12/18/2020

Owner: The Wolfe Marie Vernon Trust Owner:

1. Applicant appeals to the Board of Zoning Appeals from the action of the Zoning Official affecting the the property described in the Notice of Appeal on the grounds **Granting** or **Denial** (indicate below) *

☐ Granting

☒ Denial

of an application for a permit to:

was erroneous and contrary to provisions of Zoning Code Section:

OR

Applicant hereby appeals to the Board of Zoning Appeals from the following action or decision of the Zoning Official:
Determination that East boundary is the "back" and therefore subject
to back yard setbacks.

which was erroneous and contrary to provisions of Zoning Code Section:
§156.007 and §156.310

2. Applicant is aggrieved by the action or decision in that:

It improperly alters setbacks and fails to provide the greatest
amount of buildable area as required by Zoning Code and prevents
addition to residence.

3. Applicant contends that the correct interpretation of the particular Zoning Code Section is:
Determine the East boundary is the "front."

4. Applicant requests the following relief:

Determination that §156.007 and §156.310 compel finding the East
boundary is the "front"

Development Approval Application (Permit) Recorded Covenant Affidavit

I, the undersigned, serve as the owner and/or owner's representative and certify that the information contained herein to be true and accurate. I further certify that the tract(s) or parcel(s) of land to which this approval request pertains:*

☐ Is Restricted

☒ Is Not Restricted

by any recorded covenant that is contrary to, conflicts with, or prohibits the activity for which approval is sought as provided in SC Code of Laws Section 6-29-1145, and the Town of Mount Pleasant Code of Ordinances §155.084 and §156.048.

Electronic Signature

certify that I am the owner or serve as the owner's representative and am duly authorized to complete this application. I certify that all information required for review of this submittal is included. If an application is found to be incomplete, the primary contact will be notified and the application removed from the agenda.* I understand that selecting the box below will serve as my electronic signature.*

☒ I agree

Information of person completing electronic signature

Name: Thomas Rode

Date: 12/18/2020

Address (if different from above): 15 Mid. Atlantic Wharf

12/21/2020

<https://www.tompsc.com/Admin/FormHistory.aspx?SID=41772>

Email:

thomas@tktlawyers.com

Phone:*

8439378000

PROPERTY OWNER ACKNOWLEDGEMENT FORM Please upload this form containing the original signature of the property owner, which verifies the applicant is acting with the owner's permission.

Owner Signature Form for Boards-Cmsns (1)_2.pdf

* indicates required fields.

Remaining Pages of Exhibit Omitted as Duplicative

See Appellant's Notice of Appeal Filed with BZA on
12/18/20. *Supra*

ELECTRONICALLY FILED - 2021 Mar 19 2:46 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1000785

EXHIBIT C

**(Zoning Official Emails Constituting the Record of the
Zoning Official)**

From: Mike Robinson
 To: Chris McGowan, Mike Robinson
 Cc: Brooke Gethers
 Subject: RE: 520 Whilden Street - side setback question
 Date: Friday, November 20, 2020 12:26:00 PM
 Attachments: 11/20/2020 12:26:00 PM

I spoke to the Zoning Administrator and we reviewed all of the requests to date.

1. Can the 'rear yard' be counted as the front yard? This was the initial question asked with regard to the enclosed rear porch.

156.007 Definitions

BUILDING LINE (includes **SETBACK**). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), both regardless of lot and building orientation so as to provide the greatest amount of buildable area.

156.315 SR2-OD; Special R-2 Overlay District.

(E) *Lot, yard, height, and coverage requirements.* Development standards for SR2-OD shall be in accordance with the Residential Development Guidelines Table in § 156.012.

- (1) *Minimum yard requirements.*

Front yard 15 feet

Although the definition notes that the setbacks are applied 'regardless of lot and building orientation', the phrase is used in the context of establishing the setbacks based on the lot dimensions, not lot or building orientation. If the longer dimension was on the street and the shorter dimension was the lot depth from the street, then the front and rear setbacks would still be applied to the lot on the shorter dimension. The actual front yard of 15 feet allowed by 156.315 E.1, in our opinion, would be the side from which the access to the lot is provided, in this case, the access easement side or primary façade of the principle structure designed as the 'front'.

You can appeal this decision to the Board of Zoning Appeals, Appeal of Decision of Zoning Official. You would have 30 days from the date of this email to file the appeal. You may also request a variance to allow the rear yard encroachment. There is no time constraint for requesting a variance to allow the rear yard encroachment as there is with an appeal of an administrative decision. The next regularly scheduled meeting of the Board of Zoning Appeals is January 25, 2021. The submittal date for the January 25 meeting is January 4, 2021. Submittals are made online and must be received on or before 11:59 PM.

2. Can the fireplace be located on the end of the deck as shown on plan provided.

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

(A) *General.*

(3) Uncovered porches and uncovered decks may encroach into a required rear or side yard not more than 40% of the required setback, but no closer than three feet from the property line; except that when a zero-lot line provision is in effect, the 40% reduction shall apply to the minimum required distance between structures. No additional encroachments for outside stairways shall be permitted.

The uncovered deck may project into the rear yard 40% of the required setback as noted above; however, the chimney must meet the requirements of:

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

(A) *General.*

(1) Items such as but not limited to sills, eaves, belt courses, window air-conditioning units, chimneys, cornices, ornamental features, and bay windows may protrude into a required yard a distance not to exceed 24 inches; provided, however, the bay window projection is limited to maximum span length of ten feet along the exterior wall of the building.

156.107 A.1 only allows the chimney to project into a required rear yard for a distance not to exceed 24 inches.

Again, this interpretation may be appealed to the Board of Zoning Appeals or a variance may be requested. The appeal must be filed within 30 days of the date of this email. A variance may be requested at any time. The next regularly scheduled meeting of the Board of Zoning Appeals is January 25, 2021. The submittal date for the January 25 meeting is January 4, 2021. Submittals are made online and must be received on or before 11:59 PM.

3. Can the awning over the side door project into the side yard approximately four feet?

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

(A) *General.*

(2) Items such as but not limited to open fire escapes; elevators; outside stairways leading to a building entrance, but not to an uncovered porch or deck; balconies; and outside air-conditioning units and propane/heating oil tanks may be permitted to project into the required yard for a distance of not more than four feet, when so placed as to not obstruct light and ventilation, but in no case closer than three feet from the property line.

Outside stairways leading to an uncovered porch or deck may project into the required yard for a distance of not more than four feet.

(A) *General.*

(1) Items such as but not limited to sills, eaves, belt courses, window air-conditioning units, chimneys, cornices, ornamental features, and bay windows may protrude into a required yard a distance not to exceed 24 inches; provided, however, the bay window projection is limited to maximum span length of ten feet along the exterior wall of the building.

Eaves of the building may project into the required yard for a distance not to exceed twenty four inches.

If an awning is desired, it would require a variance to allow it to project and for the stairs to project into a required yard when accessing a covered porch or deck.

Again, this decision can be appealed as noted in 1 and 2 or you can request a variance at any time.

Record on Appeal 39

I hope this helps. I know you have studied many options to avoid pursuing a variance. As always, I'm more than happy to discuss any ideas you have in order to meet the requirements. Also, it is your right to request a variance. If you decide to pursue a variance, I'd be more than happy to review the requirements with you with regard to whichever option(s) you wish to pursue.

Do not hesitate to let me know how I can help you and your client get this resolved satisfactorily.



Michael C. Robertson, AICP
Principal Planner
Planning & Development Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464

mrobertson@tompco.com
843-884-1229

P.S. We want to hear from you about how our department is doing! Please take a few minutes to complete our [online satisfaction survey](#) and give us your thoughts. Thanks!

From: Cintra McGauley <cintra@herlongarchitects.com>
Sent: Wednesday, November 18, 2020 4:26 PM
To: Steve Herlong <steve@herlongarchitects.com>
Cc: Mike Robertson <MRobertson@tompco.com>; Brooke Gerbracht <brooke@herlongarchitects.com>
Subject: Re: 520 Whilden Street - side setback question

Hi Mike,

Were you able to get any feedback on this from your zoning administrator?

Let us know if you need more information.

Thanks!
Cintra

HERLONG INTERIORS
ARCHITECTS HERLONG

Cintra Sedalik Interior Designer

Herlong Architects
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Columbia Island, SC
W 843 880 2491
F 843 880 9191

www.herlongarchitects.com

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On Nov 12, 2020, at 10:50 AM, Steve Herlong <steve@herlongarchitects.com> wrote:

Mike,

Attached is an exterior elevation of the deck with the fireplace and chimney.

Steve

On Nov

<Lord Deck Elevation.pdf>

12, 2020, at 7:33 AM, Mike Robertson <MRobertson@tompco.com> wrote:

Steve,

Thanks. The deck can extend, I'm not certain about the fireplace though. Can you send an elevation--it can be schematic, that I can forward to our Zoning Administrator for an interpretation?

Michael C. Robertson, AICP
Principal Planner
Planning & Development Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464

Record on Appeal 40



Michael C. Robertson, AICP
843-884-1229

P.S. We want to hear from you about how our department is doing! Please take a few minutes to complete our online satisfaction survey and give us your thoughts. Thanks!

From: Steve Herlong <steve@herlongarchitects.com>
Sent: Wednesday, November 11, 2020 3:48 PM
To: Mike Robertson <MRobertson@ionpsc.com>
Cc: cintra McGauley <cintra@herlongarchitects.com>
Subject: Re: 520 Whilden Street - side setback question

This message originated outside our organization. Use caution when clicking links or opening attachments.

Good afternoon Mike,

After receiving your response and seeing the possibility of having a deck with a reduced rear setback, we wanted to show you this option for a deck with a fireplace on it within the reduced setback of 15'. Does this comply?

Regards,

Steve

On Nov 9, 2020, at 8:21 AM, Mike Robertson <MRobertson@ionpsc.com> wrote:

Steve,

Modifications of Yard Regulations (A)(1) allows eaves to project no more than 24 inches into a required setback. We would need to check with the Zoning Administrator to see if the awning would be allowed. The language states "such as but not limited to..." which may allow it. If 24 inches will work for you, I'll forward the request.

§ 156.107 MODIFICATIONS OF YARD REGULATIONS.

(A) General.

(1) Items such as but not limited to sills, eaves, belt courses, window air-conditioning units, chimneys, cornices, ornamental features, and bay windows may protrude into a required yard a distance not to exceed 24 inches; provided, however, the bay window projection is limited to maximum span length of ten feet along the exterior wall of the building.

(2) Items such as but not limited to open fire escapes; elevators; outside stairways leading to a building entrance, but not to an uncovered porch or deck; balconies; and outside air-conditioning units and propane/heating oil tanks may be permitted to project into the required yard for a distance of not more than four feet, when so placed as to not obstruct light and ventilation, but in no case closer than three feet from the property line.

(3) Uncovered porches and uncovered decks may encroach into a required rear or side yard not more than 40% of the required setback, but no closer than three feet from the property line; except that when a zero-lot line provision is in effect, the 40% reduction shall apply to the minimum required distance between structures. No additional encroachments for outside stairways shall be permitted.

<image001.png>

Michael C. Robertson, AICP
Principal Planner
Planning & Development Department
100 Ann Edwards Lane
Mount Pleasant, SC 29464

mrobertson@ionpsc.com
843-884-1229

P.S. We want to hear from you about how our department is doing! Please take a few minutes to complete our online satisfaction survey and give us your thoughts. Thanks!

From: Steve Herlong <steve@herlongarchitects.com>
Sent: Friday, November 6, 2020 11:26 AM
To: Mike Robertson <MRobertson@ionpsc.com>
Cc: cintra McGauley <cintra@herlongarchitects.com>
Subject: 520 Whilden Street - side setback question

This message originated outside our organization. Use caution when clicking links or opening attachments.

Hi Mike,

Thanks for your information regarding the "front/rear" setback questions.

We have what we think is a simpler question today. As you can see in the site plan below, the existing house is constructed on the 10' side setback. The owners want to construct an awning to protect a door on that side wall (shown in red). I would assume that roof overhangs would be allowed in the setback but would an awning be considered a roof overhang? And what is the amount of roof overhang that is allowable?

Regards,

Record on Appeal 41

Steve

Begin forwarded message:

From: Cintra McGauley <cintra@herlongarchitects.com>
Subject: Re: Lord plans on top of survey
Date: November 6, 2020 at 10:08:36 AM EST
To: Steve Herlong <steve@herlongarchitects.com>

this is where the new exterior doors would be as we drew them so as you can see it would be on the tight side of the side setback. I wonder if overhangs from Awnings are okay though? We can't really move the exterior doors down at all..

<image002.png>

On Nov 5, 2020, at 1:50 PM, Steve Herlong <steve@herlongarchitects.com> wrote:

<Lord Porch.PC9>
<Lord Porch Addition.pdf>

On Nov 5, 2020, at 1:31 PM, Cintra McGauley <cintra@herlongarchitects.com> wrote:

Could you send me the PCADD file where you created the plans on an overlay of the survey? I want to see where the awning may come in to see if we need to ask Mike about that..

Steve Herlong | AIA Architect, Design Principal

<EMAIL-SIG7.png>

Herlong Architects
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Sullivan's Island, SC
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F 843.863.9191

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Steve Herlong | AIA Architect, Design Principal

<image003.png>

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Steve Herlong | AIA Architect, Design Principal

<EMAIL-SIG7.png>

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Record on Appeal 42

Steve Herlong | AIA Architect, Design Principal

<EMAIL-SIG7.png>

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EXHIBIT D

(The Agenda for the BZA Hearing January 25, 2021)



**BOARD OF ZONING APPEALS
REVISED MEETING NOTICE
Mount Pleasant Town Hall Council Chambers
100 Ann Edwards Lane
January 25, 2021
6:00 PM**

*NOTE: Items in blue are hyperlinks to submittals and additional information.
Some documents are large and may take a few moments to load.
Green arrows > in Minutes are hyperlinks to the recording.*

- A. Roll Call
- B. Approval of Agenda
- C. Approval of Minutes
- D. Public Comment
- E. General Correspondence
Request for one-year extension of Case V-41-05 in accordance with §156.049
- F. Explanation of Procedures
- G. Administration of Oath
- H. Business

STAFF REPORT

1. ~~WITHDRAWN BY APPLICANT Case V-36-2020, 1506 Checker Court, TMS# 583-03-00-366, Request for relief from the strict application of PD to allow a 5 foot side yard encroachment. The PD Ordinance requires a 10 foot side yard. Correspondence~~
2. Case V-38-2020, 262 Commonwealth, TMS# 596-08-00-260, Request for relief from the strict application of 156.111 to allow a 1,225 sq. ft. footprint accessory structure, 26-feet, 3 ½ inches in height. The ordinance allows a maximum 750 sq. ft. footprint for an accessory structure, 18-feet in height.
3. Case A-1-2021, 32 Montrose, TMS# 517-06-00-732. Appeal of the Zoning Administrator's determination that the property is an "All Yard Building" in accordance with the provisions of the I'On Code Planned Development Ordinance. Applicant contends that the lot should be

Record on Appeal 45

designated a "Rear Yard Building" based on previous site plan approvals and correspondence with the Planning Department.
Record of Zoning Administrator

4. **Case V-3-2021, 32 Montrose, TMS# 517-06-00-732**, Request for relief from the strict application of the I'On Code to allow development of the lot as a Rear Yard Building or 47% building coverage for an All Yard Building type. The I'On Code Planned Development ordinance limits All Yard Building types to 40% building coverage. The applicant contends previous development plans applied Rear Yard Building standards to the lot.
5. **Case V-1-2021, 1896 N. James Gregarie Rd., TMS# 549-12-00-163**, Request for relief from the strict application of §156.106 to allow an approximately 500 square foot impervious surface for an accessory use encroachment into the 30-foot DHEC-OCRM critical line impervious area setback.
6. **Case A-2-2021, 520 Whilden Street, TMS# 532-01-00-271**, Appeal of the Zoning Official's determination establishing the west boundary as the front yard. Applicant contends that the determination improperly alters the setbacks and fails to provide the greatest amount of buildable area as required by the Zoning Code and prevents an addition to residence. The applicant contends that the correct interpretation of the particular Zoning Code section is to determine that the East boundary is the "front".
Record of Zoning Official
7. **Case A-3-2021, 3 William Street, TMS# 532-13-00-133**, Appeal of the Zoning Official's determination that items that have been withdrawn may not be refiled for six months in accordance with the Board of Zoning Appeals Rules of Procedures adopted on January 27, 2020. Applicant requests a hearing within the six-month timeframe.
Record of Zoning Official
8. **Case V-2-2021, 153 Ponsbury Rd., TMS# 535-06-00-154**, Appeal of the strict application of the I'On Code Planned Development to allow lot classification as a Rear Yard Lot with 60% lot coverage and 3-foot side yard setback. Applicant wishes to combine two lots to create a single lot which changes the lot classification to All Yard Lot type which allows 40% lot coverage and requires a 5-foot side yard setback. Additionally, the applicant requests relief from the strict application of § 156.142 (C)(2) to allow repairs and improvements greater than 50% while maintaining 3-foot side yard setback. The ordinance requires

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nonconforming structures and uses improved by more than 50% to be brought into conformance with all applicable sections of the zoning code. Correspondence

9. Case V-4-2021, 1458 Fiddlers Marsh, TMS# 532-16-00-003, Request for relief from the strict application of §156.226 seeking to forego 9.5 inches in additional tree mitigation as required under Tree Protection Ordinance. The ordinance required 17.5 inches (50%) mitigation for the removal of a 19-inch live oak and 16-inch live oak.

I. **Approval of Final Orders**

J. **Re-adoption of Rules of Procedure**

K. **Election of Officers**

L. **Executive Session, Case S-2-2020, Bowman Road & Hospital Drive, TMS# 559-00-00-070**, Request for Special Exception in accordance with the provisions of Section 156.326 (C) Use Conditions (5) Commercial Uses (g) Gas Station as allowed in 156.318 (D)(5)(d).

M. **Adjournment**

Title VI Notice: The Town of Mount Pleasant fully complies with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and related statutes and regulations in all programs and activities. Town meetings are conducted in accessible locations, materials can be provided in accessible formats, and provided in languages other than English. If you would like accessibility or language accommodation, please contact the Title VI Coordinator one week in advance of the meeting, at the Town of Mount Pleasant at 843-884-8517.

RESOURCE LINKS

[Explanation of BOZA Process](#)
[Comprehensive Plan](#)
[Online Document Library](#)
[Use Table](#)
[Zoning Map \(interactive\)](#)

[Case Law Notes](#)
[Future Land Use Map](#)
[Projects and Applications Map](#)
[Zoning Code \(PDF\)](#)

NOTE: Correspondence must be received no later than 4:30 PM,
 January 20.

EXHIBIT E

(The Minutes for the BZA Hearing January 25, 2021)

**TOWN OF MOUNT PLEASANT, SOUTH CAROLINA
BOARD OF ZONING APPEALS
January 25, 2021
MINUTES**

Attachment 1—Staff Report

Present: Barry Wolff, Chair, Julian Hopkins, Beth Santilli, Elliott Barrow,
Stephen Wood, Stephen Duke.
Absent: Megan Stevens.
Staff: Michael Robertson, David Pagliarini, Mac Deford, Lynnette Lynes

Mr. Wolff called the meeting to order at 6:02 pm.

A. Approval of Agenda

✓ *Mr. Wood moved for approval of the agenda. Mr. Duke seconded the motion. All in favor.*

B. Approval of Minutes

✓ *Mr. Wolff moved for approval of the minutes. Mr. Duke seconded the motion. All in favor.*

C. Explanation of Procedures

Mr. Wolff reviewed the procedures with the public.

D. Public Comment

There being no comments, Mr. Wolff continued with the agenda.

E. General Correspondence

1. Request for one-year extension of Case V-41-05 in accordance with §156.049

✓ *Mr. Duke moved for approval of the request. Mr. Hopkins seconded the motion. All in favor.*

F. Administration of Oath

Mr. Wolff administered the oath to those speaking.

Record on Appeal 49

G. Business

1. Case V-36-2020, 1506 Checker Court, TMS# 583-03-00-366, Request for relief from the strict application of PD to allow a 5-foot side yard encroachment. The PD Ordinance requires a 10-foot side yard. Correspondence

This item was withdrawn.

2. Case V-38-2020, 262 Commonwealth, TMS# 596-08-00-260, Request for relief from the strict application of §156.111 to allow a 1,225 sq. ft. footprint accessory structure, 26-feet, 3 ½ inches in height. The ordinance allows a maximum 750 sq. ft. footprint for an accessory structure, 18-feet in height.

✓ Mr. Jason Dobson, owner, reviewed the request with the Board.

✓ Ms. Jody Kennedy 3574 Holgrem St, expressed concern with drainage. She stated that there have been drainage issues with this lot since the house was constructed. She expressed concern with the additions to the home, the additional structure and the location of the additional structure. She stated that she is not opposed to having a structure to house the additional vehicles and equipment but is opposed to the additional structure being used for commercial use and storage. She suggested that the location of the additional structure is too close to the property line and would affect their property. She expressed concern with the property values being affected. She expressed concern with uses such as fires in the backyard that could be hazardous to the surrounding property. She suggested that there should be additions to the main structure.

✓ Mr. Chad Bryant, 3536 Holgrem St, stated that he lives directly across from the proposed property. He is in favor of having the vehicles stored in a building but is not in favor of the size of the proposed structure. He stated that he has not had any difficulty with the owner.

There being no further comments, Mr. Wolff closed public comment.

✓ Mr. Robertson reviewed staff comments with the Board.

➤ *Mr. Wood moved for denial based on the findings that the applicant has failed to show that being within the 750 square foot limit would unreasonably restrict the use of property. Mr. Duke seconded the motion. Motion passed on a 4 to 2 vote with Mr. Barrow, Mr. Hopkins, Mr. Duke, and Mr. Wood in favor; Mr. Wolff and Ms. Santilli opposed.*

3. Case A-1-2021, 32 Montrose, TMS# 517-06-00-732. Appeal of the Zoning Administrator's determination that the property is an "All Yard Building" in accordance with the provisions of the I'On Code Planned Development Ordinance. Applicant contends that the lot should be designated a "Rear Yard Building" based on previous site plan approvals and correspondence with the Planning Department. Record of Zoning Administrator

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Mr. Cordes Ford, attorney, reviewed the request with the Board.

➤ There being no comments, Mr. Wolff closed the public comments.

➤ *Mr. Wood moved to uphold the Zoning Administrator's determination. Mr. Wood seconded the motion. Motion passed on a 5 to 1 vote with Mr. Wolff, Ms. Santilli, Mr. Hopkins, Mr. Duke, and Mr. Wood in favor; Mr. Barrow opposed.*

4. Case V-3-2021, 32 Montrose, TMS# 517-06-00-732, Request for relief from the strict application of the I'On Code to allow development of the lot as a Rear Yard Building or 47% building coverage for an All Yard Building type. The I'On Code Planned Development ordinance limits All Yard Building types to 40% building coverage. The applicant contends previous development plans applied Rear Yard Building standards to the lot.

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Mr. Cordes Ford, attorney, reviewed the request with the Board.

➤ Ms. Laura Winterfield, owner, stated that they moved forward with their plans based on the letter from Ms. Kate Miller. She suggested that they have done their due diligence and asked that the request be approved.

➤ There being no further comments, Mr. Wolff closed public comments.

➤ *Mr. Wolff moved for reconsideration of the previous motion for appeal A-1-2021. Motion failed due to the lack of a second.*

➤ *Mr. Wood moved for denial of the variance based on findings that the criteria for a hardship has not been met. Mr. Hopkins seconded the motion. All in favor.*

5. Case V-1-2021, 1896 N. James Gregarie Rd., TMS# 549-12-00-163, Request for relief from the strict application of §156.106 to allow an approximately 500 square foot impervious surface for an accessory use encroachment into the 30-foot DHEC-OCRM critical line impervious area setback.

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Mr. Simmons Young, architect, reviewed the request with the Board.

➤ There being no comments, Mr. Wolff closed public comments.

➤ *Mr. Hopkins moved for denial of the request based on the findings that it does not meet the hardship criteria based on the information included on the application and that it would not enhance property values. Mr. Barrow seconded the motion. All in favor.*

The Board convened for a short break at 7:41 pm and reconvened at 7:49 pm.

6. Case A-2-2021, 520 Whilden Street, TMS# 532-01-00-271, Appeal of the Zoning Official's determination establishing the west boundary as the front yard. Applicant contends that the determination improperly alters the setbacks and fails to provide the greatest amount of buildable area as required by the Zoning Code and prevents an addition to residence. The applicant contends that the correct interpretation of the particular Zoning Code section is to determine that the East boundary is the "front". Record of Zoning Official

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Mr. Thomas Rhode, attorney, reviewed the request with the Board.

➤ There being no comments, Mr. Wolff closed public comment.

➤ *Mr. Wood moved to uphold the Zoning Administrator's determination and denial the appeal. Mr. Duke seconded the motion. Motion passed on a 5 to 1 vote with Mr. Wolff, Ms. Santilli, Mr. Hopkins, Mr. Duke and Mr. Wood in favor; Mr. Barrow opposed.*

7. Case A-3-2021, 3 William Street, TMS# 532-13-00-133, Appeal of the Zoning Official's determination that items that have been withdrawn may not be refiled for six months in accordance with the Board of Zoning Appeals Rules of Procedures adopted on January 27, 2020. Applicant requests a hearing within the six-month timeframe. Record of Zoning Official

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Mr. James Flatley, owner, reviewed the request with the Board.

➤ There being no comments , Mr. Wolff closed public comment.

➤ *Mr. Wood moved to uphold the Zoning Administrator's determination and deny the request based on the findings that the agent was secured by the owner. Mr. Hopkins seconded the motion. All in favor.*

8. Case V-2-2021, 153 Ponsbury Rd., TMS# 535-06-00-154, Appeal of the strict application of the I'On Code Planned Development to allow lot classification as a Rear Yard Lot with 60% lot coverage and 3-foot side yard setback. Applicant wishes to combine two lots to create a single lot which changes the lot classification to All Yard Lot type which allows 40% lot coverage and requires a 5-foot side yard setback. Additionally, the applicant requests relief from the strict application of § 156.142 (C)(2) to allow repairs and improvements greater than 50% while maintaining 3-foot side yard setback. The ordinance requires nonconforming structures and uses improved by more than 50% to be brought into conformance with all applicable sections of the zoning code. Correspondence

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Ms. Julie O'Connor, architect, reviewed the request with the Board.

➤ Mr. Rusty Bennett, owner, suggested that the property is unique because of the number of historic trees on the properties. He stated that they intend to keep the existing foundation and if required to remove the foundation, it would be a significant cost and would harm the historic trees. He suggested that the request would enhance the neighborhood as it would not be adding density to the neighborhood with additional dwelling units on the property.

➤ There being no further comments, Mr. Wolff closed public comments.

➤ *Mr. Wood moved for approval of the request based on the evidence included in the staff report with the condition that the protected and historic trees on both lots be preserved and prohibit the right to seek a variance to remove any historic or protected trees. Mr. Duke seconded the motion. All in favor.*

9. Case V-4-2021, 1458 Fiddlers Marsh, TMS# 532-16-00-003, Request for relief from the strict application of §156.226 seeking to forego 9.5 inches in additional tree mitigation as required under Tree Protection Ordinance. The ordinance required 17.5 inches (50%) mitigation for the removal of a 19-inch live oak and 16-inch live oak.

➤ Mr. Robertson reviewed staff comments with the Board.

➤ Mr. Scott Levy, owner, reviewed the request with the Board.

➤ There being no further comments, Mr. Wolff closed public comment.

➤ *Mr. Hopkins moved for approval of the request in foregoing future or pending tree mitigation based on the findings that the applicant has gone above and beyond giving extra space for Mount Pleasant Waterworks and their right-of-way and has already planted several trees. Mr. Duke seconded the motion.*

➤ *Mr. Hopkins moved to amend his motion to include relief from the 9.5 inches of remaining mitigation. Mr. Duke seconded the motion. All in favor with Mr. Barrow abstaining.*

Mr. Wolff called for a vote on the amended motion. Motion failed on a 3 to 3 vote with Mr. Wolff, Mr. Hopkins, and Mr. Duke in favor; Ms. Santilli, Mr. Barrow, and Mr. Wood opposed.

✓ *Ms. Santilli moved for approval of a 50% reduction of the required remaining 9.5 inches of mitigation for the 19 inch and 16 inch live oak trees. Mr. Wood seconded the motion. All in favor.*

H. Approval of Final Orders

The Board approved final orders.

I. Re-adoption of Rules of Procedure

✓ *Mr. Wood moved for approval. Mr. Duke seconded the motion. All in favor.*

J. Election of Officers

✓ The Board approved Mr. Wolff as chair, and Mr. Wood as vice-chair by secret ballot.

K. Executive Session, Case S-2-2020, Bowman Road & Hospital Drive, TMS# 559-00-00-070, Request for Special Exception in accordance with the provisions of Section 156.326 (C) Use Conditions (5) Commercial Uses (g) Gas Station as allowed in 156.318 (D)(5)(d)

✓ *Mr. Wood moved to convene into executive session for legal advice. Mr. Duke seconded the motion. All in favor.*

The Board convened into executive session at 9:33 pm and reconvened at 9:51 pm. No motions were made while in executive session.

There being no further business, the meeting adjourned at 9:52 pm.

Submitted by,
L. Lynes
BOZA01252021

EXHIBIT A

(West End “Front” of Appellant’s Property)



1 of 45

ELECTRONICALLY FILED - 2024 ON 02/25/24 PM CHARLESTON - CANNON FILED - CASE#202401007

Record on Appeal 57

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	C/A No.: 2021-CP-10-00785
<i>IN RE: 520 WHILDEN ST.</i>	)	
IN WHICH,	)	
	)	REPLY TO RESPONDENT’S MEMO
THE WOLFE MARIE VERNON TRUST IS,	)	IN OPPOSITION
	)	
Appellant,	)	
	)	
vs.	)	
	)	
THE TOWN OF MOUNT PLEASANT AND	)	
THE MOUNT PLEASANT BOARD OF	)	
ZONING APPEALS IS,	)	
	)	
Respondent.	)	

COMES NOW, the Appellant in reply to Respondent’s Memorandum in Opposition.

REPLY TO FACTS

As recognized by Respondent, the “Lot,” which is located at 520 Whilden Street¹ does not abut any public street. It is accessible from Whilden Street *via* a private shared access easement. The Lot is bounded on all sides by other homes. Respondent labels the West side of the Lot as the “street facing side” (Memo p. 6); *see also* (Memo p. 8) (implying it is the “true/actual street facing side”). This is misleading. There are four houses—each on a different lot—between the West boundary and Whilden St. *See* (Exhibit 1) (Chas. Co. GIS Map). The West boundary faces the neighbor, not the street. Further, any suggestion that the West boundary is nearest the street is also incorrect because the Lot’s North and South boundaries are much closer to public streets—separated by only one house from Venning Street to the North, and Morrison Street to the South *See* (Id.).

¹ TMS No. 532-01-00-271

ARGUMENT IN REPLY

1. **Respondent's claim that Section 156.007 is irrelevant commands reversal of the BZA's Order.**

The BZA determined this issue is controlled by Section 156.007 of the Zoning Ordinance and Appellant has appealed arguing the BZA's ruling is inconsistent with the requirements of this Ordinance.² However, now Respondent confoundingly asserts this Ordinance is "completely irrelevant" to the determination of whether the East boundary is the rear or front (Memo p. 2). Instead, Respondent asserts this provision speaks only to identification of the "sides" or "longest dimension" and once that determination is made this provision of the Ordinance has no import whatsoever, and therefore the Town is free to determine the front and rear upon the whims of its fancy. This is absurd.

Respondent (and the BZA) fundamentally ignored that Section 156.007 describes the creation of the "Building Line," which is established by way of applying the applicable set-back from each of the lot lines (i.e., sides, front, and rear) around the circumference of the parcel. By creating the area or "box" in which the "building or structure must be placed" the Building Line serves as the boundary which the building cannot exceed. Because the front and rear setbacks are not the same, it matters which lot line is the front and which is the rear. Without identifying the

² The Ordinance reads:

BUILDING LINE (includes *SETBACK*). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), **both regardless of lot and building orientation so as to provide the greatest amount of buildable area.**

(emphasis added).

front and rear yards, the Building Line cannot be established. Thus, this Ordinance speaks directly to the determination of the front and rear yards. This is precisely why the Ordinance contains the second clause mandating these yards must be determined “both regardless of lot and building orientation so as to provide the greatest amount of buildable area”—to provide further direction on how to make this determination.

Respondent would have this Ordinance interpreted such that once the sides (*i.e.*, longer dimension) are determined, the Town is free to decide which of the remaining boundaries is the front and which is the rear based on which it calls “the Town’s process, legislative intent, and practical realities” (Memo p. 6). While Respondent fails to identify what “process, legislative intent, and practical realities” it is referencing, the fact remains this is simply not what the plain language of the Ordinance says.³ Instead, it specifically commands the determination be made to maximize buildable area. *Id.*

Moreover, Respondent’s suggestion that Section 156.007 does not contemplate application to the determination of front vs. rear is inconsistent with the plain language of the statute. First, this section of the Ordinances plainly refers to “front and rear yards.” *See* Zoning Ord. § 156.007 (“Front and rear yards should be located along the width of the lot (shorter dimension)”). Secondly, Respondent’s interpretation would render the second clause—*i.e.*, “both regardless of lot and building orientation so as to provide the greatest amount of buildable area”—to be superfluous. The identification of the “sides” by the longer dimension is a purely objective evaluation and there

³ If, as Respondent contends, this was the intent of the Town Council when it passed the Ordinance, it must be presumed that it would have adopted language to clearly effectuate this. However, it did not. Thus, the rules of statutory interpretation do not support Respondent’s assertion. *See Taylor v. S.C. DMV*, 382 S.C. 567, 570, 677 S.E.2d 588, 590 (2009) (“if [the] Legislature had intended [a] certain result in a statute it would have said so”); *see also State v. Zulfer*, 345 S.C. 258, 262-63, 547 S.E.2d 885, 887 (Ct. App. 2001) (“[H]ad the legislature intended [a statute to produce a certain result] it could easily have limited the statute [accordingly].”).

is no need to distinguish one side from another because in every zoning district each “side” is subject to the same setback as the other side. *See* Zoning Ord. § 156.303 (establishing all side yard setback requirements for the various districts). This second clause can only have meaning in the context of distinguishing one short dimension side from another short dimension side—*i.e.*, front vs. rear—because this is the only distinction that matters. In sum, if Respondent’s interpretation of the statute were what was intended, the second clause would not be there. The fact that the clause exists means it was intended to serve a purpose, and it can only serve a purpose when distinguishing the front from the rear. *See Olds v. City of Goose Creek*, 424 S.C. 240, 251, 818 S.E.2d 5, 11 (2018) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”). Whichever designation maximizes buildable area determines the designation of front vs. rear.

2. **Respondent’s assertion regarding the “purpose” of the Special Overlay District is inconsistent with the purpose plainly stated in the Ordinance.**

Respondent dismisses Appellant’s assertion that the purpose of the Special Overlay District favors addition and renovations of homes. Instead, Respondent claims the purpose is to “enhance the streetscape” (Memo p. 6). That Respondent’s assertion is wrong is plain from the very first words of the statute creating the Special Overlay District which states: “**The purpose of the district is to allow for continued construction, addition to and renovation of homes located [there].**” *See* Zoning Ord. § 156.315(A)⁴ (emphasis added).

3. **Respondent’s suggestion that Appellant should seek a variance is misplaced.**

Respondent claims that because the Court’s interpretation of the statute would apply town-wide that Appellant should instead request a variance—rather than asking to have the law applied

⁴ Appellant inadvertently cited this section as 156.310 rather than 156.315 in its initial memo.

as written. *See generally* (Memo p. 8). However, this makes no sense. The law is the law. The courts must apply it uniformly even when the Town does not. The notion that Appellant is only entitled to the protection of the law by seeking special dispensation is a non-sequitur. Respondent's position is fatally circular. A variance can only be sought if the ordinance, as written, commands the East side is the rear. Yet this is the very issue in dispute and the very point on which Respondent is wrong.

Respondent complains that to apply the statute as Appellant suggests (and as it is written) would "end the Town's ability to designate the 'front' vs. the 'rear' based on which side faces the street and/or the primary façade of the home" (Memo p. 8). To be certain, the Town's ability to make the determination this way ended when the Town Council enacted an Ordinance that required that decision be made "regardless of lot and building orientation so as to provide the greatest amount of buildable area." *See* Zoning Ord. § 156.007. What Respondent is truly seeking is for this Court to engage in judicial legislation. To disregard the plain language of the law because Respondent does not like the result. This should not stand. *See e.g., Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964) ("There is a marked distinction between liberal construction of statutes . . . and the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced. The former is a legitimate . . . while the latter is judicial legislation, forbidden by" the law.).

Respondent summarily asserts that to rule for Appellant would "[u]nquestionably [] lead to the diminishment of the beauty of the Town" because it would allow homeowners to orient their homes so as to maximize buildable area. Notwithstanding the utter lack of support for this claim, Respondent overlooks that the issues implicated here are limited to the Special R-2 Overlay District in which predominantly all the effected homes have already been built. Moreover, its claim

rests on the contention that the “front” must be the boundary facing the street when, to the contrary, the BZA’s own Order stated that orientation to the street is immaterial, and that under the Ordinance even where a parcel’s the longer dimension borders the street it would still be considered the “side.” *See* (BZA Order p. 3). Ultimately, if Respondent desires an Ordinance that does not favor maximizing buildable area, then it should submit its arguments to the Town Council, which unlike this Court, can amend the Ordinance. Until then, the Ordinance plainly commands the determination be made “so as to maximize buildable area” and this Court should apply the Ordinance accordingly rather than re-writing it. Zoning Ord. § 156.007.

CONCLUSION

For the reasons stated above, together with those previously stated, this Court should reverse.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

s/TJ Rode

THOMAS J. RODE

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Attorneys for Appellant

November 4, 2021
Charleston, South Carolina

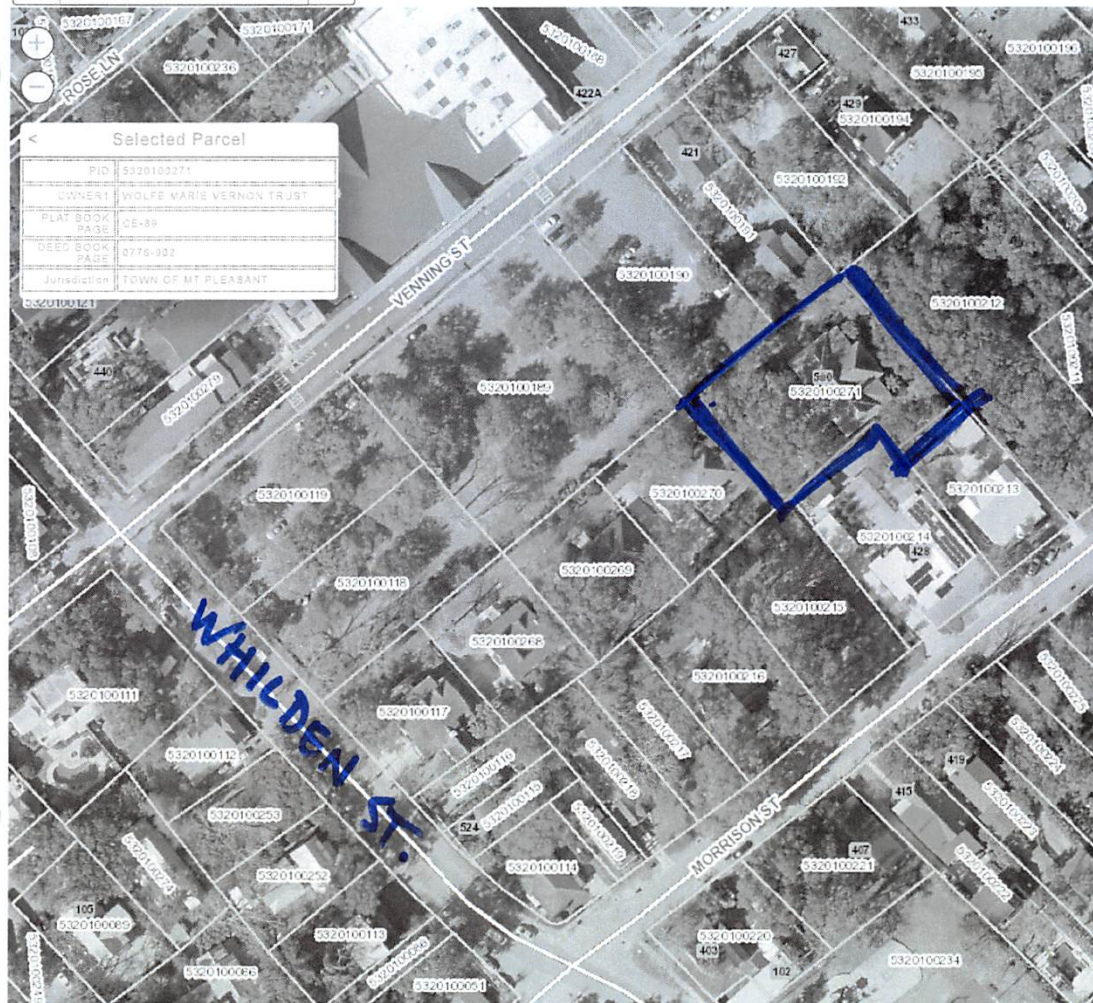
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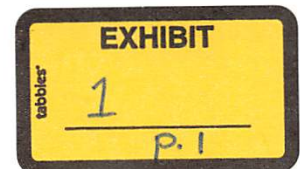
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
2021-CP-10-00785

Wolfe Marie Vernon Trust,)
 Appellant) TRANSCRIPT OF RECORD
 -vs-)
) December 16, 2021
The Town of Mount Pleasant,)
 Respondent)
) Charleston, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Jr., Judge

A P P E A R A N C E S:

Thomas J. Rode, Esquire
Attorney for the Appellant

Brian L. Quisenberry, Esquire
Attorney for the Respondent

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

1 THE COURT: So tell me about the house.
2 There's a setback on the property. East is east
3 and west is west ---

4 MR. QUISENBERRY: That's right. That's
5 right. It's all about orientation. I represent
6 the township of Mount Pleasant, Your Honor.

7 THE COURT: Okay.

8 MR. QUISENBERRY: So, I'm the Respondent,
9 but the Appellant is over here, and I'm sure he will
10 go first.

11 THE COURT: Okay.

12 MR. RODE: That's the way I understand
13 it to normally go, Your Honor. May I approach?

14 THE COURT: Yeah.

15 MR. RODE: I've got a few items here too
16 to help us follow along.

17 THE COURT: Okay. So, I couldn't tell --
18 I think I briefly read a little bit of the facts.
19 Basically, the zoning board decided that the front
20 is the back or the back is the front, and it's a 25-foot
21 setback that your client -- it won't work that way,
22 and you want to change it some other way; is that right?

23 MR. QUISENBERRY: It's his client.
24 I represent the town.

25 THE COURT: Oh, that's right. His client

1 wants it.

2 MR. RODE: Yes, Your Honor. I represent
3 the homeowners who are petitioners.

4 THE COURT: Right. So they want to change
5 the orientation and decide what's the front and what's
6 the back?

7 MR. RODE: I think that's one way of looking
8 at it. What they were looking to do is they have
9 developed plans to modify the house, which is in Mount
10 Pleasant. What this appeal was about is about an
11 interpretation of the town's ordinance as to which
12 side, the two sides at issue being the west and the east
13 side, which side of the property is subject to the front
14 setback, and which side is subject to the back setback.
15 And the distinction matters, and there's some sort
16 of unique circumstances here that apply.

17 And so starting with that, to sort of orient
18 Your Honor -- I don't know how familiar you are with
19 sort of the older area of Mount pleasant. That's where
20 this house is.

21 THE COURT: Okay.

22 MR. RODE: In Tab 1 of the notebook that
23 I handed up to you ---

24 THE COURT: Okay.

25 MR. RODE: --- this -- this is an aerial,

1 the GIS aerial, of the lot, okay? And so this lot
2 is completely landlocked, surrounded on all sides
3 by other lots.

4 THE COURT: Okay.

5 MR. RODE: It borders no streets. That
6 black arrow that you see there coming up from Whilden
7 Street is like an alleyway, like a shared driveway.
8 There are five -- four or five houses, and I think
9 four, that you sort of drive past, and I don't know
10 if you would call it behind, beside. But that alleyway
11 goes and terminates at my client's lot, which is the
12 one there circled in blue.

13 THE COURT: Okay.

14 MR. RODE: So surrounded on all sides
15 by other parcels. And I appreciate sort of the back
16 is the front, the front is the back argument that
17 I anticipate the city is going to make. But what we've
18 got here is we have an ordinance, a statute that has
19 been passed by the town of Mount Pleasant that speaks
20 directly to how to identify and how to determine which
21 setbacks apply to which boundary lines.

22 Our contention is the language of that
23 statute is plain. It's plainly objective and that
24 the town is trying to concert some subjectivity into
25 that, ignoring the objective requirements.

1 So to start with that, if you turn to
2 the second tab there, this is the -- and you may have
3 recognized this from the briefs that have been
4 submitted. This is the house, okay? This is not as
5 built; this is sort of the designed plans, the proposed
6 plans. The east side is the side that is in question,
7 all right.

8 THE COURT: Okay.

9 MR. RODE: Or the side that is the issue.
10 The -- and the reason that is, is this house, this lot,
11 is in what's called the special reserve overlay
12 district. I can't remember exactly what it's called,
13 the SR-2 overlay district. Unlike most of the districts
14 in Mount Pleasant, it has different requirements for
15 front and backyard setbacks. The front yard setback
16 is 15 feet; the backyard setback is 25 feet.

17 So specific to this overlay district
18 and others, likely, it matters which one is the front
19 and which one is the back because they're not assigned
20 the same setback, right? If you were in another zoning
21 district where it's 25 on both sides, it's not an issue.
22 Here, we've got a difference in the setback
23 requirements, which then leads us to a controlling
24 ordinance.

25 So when we requested from the town for

1 a determination that the east side was, in fact, the
2 back, based upon the statute, right, and that statute
3 there is listed in the order, which is the little blue
4 tab at the bottom of that notebook.

5 THE COURT: Okay.

6 MR. RODE: And the relevant section of
7 the statute is right there, and it defines the building
8 line, including setbacks. It's the line that represents
9 the minimum distance, when measured at right angles,
10 that the building must be placed, the front and rear
11 yards should be located along the width, or the shorter
12 dimension, and the side yard is located along the longer
13 dimension. No objection at the north and south, each
14 subject to a ten-foot setback, right?

15 THE COURT: Okay.

16 MR. RODE: No distinction between the two.
17 But then it goes on and says, "Both regardless of lot
18 and building orientation so as to provide the greatest
19 amount of buildable area."

20 That's essentially where we are hung up here
21 because when you turn the page what you see is that
22 the Board of Zoning Appeals in their order determined
23 the front and the back, based upon the orientation
24 of the building and the orientation of the lot
25 to the street. And they have offered their -- sort

1 of their explanation, I suppose, as to why they don't
2 need to comply with that second -- that last clause
3 of the ordinance.

4 When I look at this, Your Honor, we have
5 this building line description, which, to me, envisions
6 sort of a box within a box. You've got your lot,
7 and then from each line you draw your building line,
8 which encompasses the setback. And I sort of drew
9 a visual representation of what I'm thinking about,
10 got my mind on Tab 4, but it's just a very simple box
11 within a box.

12 THE COURT: Right.

13 MR. RODE: Now, ordinarily, if we have
14 a perfectly symmetrical lot, and we have equal setbacks
15 front and back, it doesn't -- this is a non-issue.
16 But we submit that that clause at the end of the statute
17 is there precisely to recognize the fact that lots
18 are not perfectly symmetrical, and that in some zoning
19 districts there is a difference between front and back.
20 And, here, that difference comes into play for a couple
21 of reasons.

22 The first is the town can't make this
23 determination subjectively, based upon the orientation
24 of the building, right? And I submit you've probably
25 seen some photos. If you were to look at this house

1 in your traditional mindset, the east side would look
2 like the back, and the west side would look like the
3 front, right? I'm not here to argue about architect.
4 What I'm here to argue about is this statute which says
5 regardless of building orientation. That's part one.

6 Part two is, so as to maximize buildable
7 area. This lot, the east side, is longer; the west side
8 is shorter. Simple geometry will tell us that when you
9 apply the larger setback to the longer side, the area
10 within the setbacks, right, or the area you can't build,
11 is larger, which then means the buildable area is
12 smaller, right?

13 So when you have that circumstance, applying
14 the larger setback to the longer property line creates
15 less buildable area, directly contradicting the very,
16 very plain language of this statute.

17 Your Honor, the statute is objective.
18 I mean, it literally is objective. Regardless
19 of building orientation, regardless of lot size.
20 The town is trying to insert subjectivity into the
21 statute, and I submit that they can't do that. There's
22 a -- we can't ignore that plain language of the statute.
23 It is there for a reason. It must be given some reason.
24 And I think the law is pretty clear on how to interpret
25 what's in the statute.

1 And I think that that objective requirement
2 is perfectly consistent, Your Honor, with the purpose
3 for which this special overlay district was created.
4 That purpose is specifically stated by the town council
5 in the ordinance, and that's at the little bottom yellow
6 tab. I included a copy of that statute.

7 And it says right at the beginning,
8 "The purpose of the district is to allow for continued
9 construction, addition to, and renovation of homes
10 located in the older district in the built-out
11 neighborhoods between Coleman Boulevard and the
12 Historic District, creating special overlay district
13 classification with flexible yard requirements,
14 and this will lead to an enhanced streetscape
15 and a pedestrian-friendly environment." That is the
16 stated purpose.

17 So to just sort of sum it up, Your Honor,
18 this is plainly the ordinance. Now, I'm not going
19 to pretend to argue what the house looks like; that's
20 not why I'm here. But that was, in essence, the basis
21 for the town's rule. And I submit that if the zoning
22 board would like the ordinances to read differently,
23 they can go talk to the town council. But right now,
24 the plain language of that statute contains those purely
25 objective requirements that it be without regard to

1 building orientation, without regard to lot orientation,
2 and to maximize buildable area. Their order in this
3 case fails on all three.

4 THE COURT: Okay.

5 MR. RODE: So that's it. I'm happy to
6 answer any other questions.

7 MR. QUISENBERRY: Your Honor, Brian
8 Quisenberry, attorney for the town of Mount Pleasant.
9 I'll try to be quick because I think this is fairly
10 simple. But my view, this is an appeal because
11 the house sits too close to the rear property line.
12 They want to do an addition that's bigger and push
13 it out over the property line, the setback line
14 in the rear, so they want to call the back front.

15 So the town rejected that; the Board
16 of Zoning Appeals rejected that and you should too,
17 so you should deny the appeal. Now there's no
18 allegation that this has been applied differently
19 to them than anyone else. It's been applied the same
20 way for years.

21 So really what they should be doing,
22 Your Honor, is getting a variance. They should ask for
23 a variance. The town suggested that would be a proper
24 approach here because it's a claim that their property
25 is somehow unique, tucked away, shaped weirdly. Seek

1 a variance. That's what a variance is for, but they
2 didn't do that. They're asking you to say that the
3 town's application throughout the years to the whole
4 town is incorrect, and that would have town-wide
5 ramifications, if you ruled with them today, Your Honor.

6 Now real quickly I want to go through the
7 town's determination, which I think is fairly simple.
8 At Tab A in my notebook, Your Honor -- you have my
9 notebook out there, Tab A.

10 THE COURT: Okay.

11 MR. QUISENBERRY: That is a photo of
12 the property we're talking about, the Tab A, and you'll
13 see there that this is the west side, which the town
14 determined was the front, is where the photo was taken,
15 and you see the front porch there, and you see the front
16 door, the primary entrance to the main building on the
17 property. And you see over to the left, the access
18 easement roadway that approaches from the west on this
19 side of the property that leads to the public street
20 right there.

21 So they determined, based on the access
22 roadway and the front porch, that this was the front
23 of the property. So -- and that is a factual
24 determination, of course, and that can only be
25 overturned by a clear error on this appeal.

1 Now on the code argument, which is a matter
2 of law that I think is easily rejected, the entire
3 argument is about this definition provision, and the
4 second sentence of the provision, building line.
5 So that says, and he read it to you, but I think I would
6 like to read it to you again, Your Honor, just to
7 emphasize something. I think it's fairly simple,
8 but just to clarify and make sure. It says, front --
9 and this is the second sentence, which the town
10 focuses on, front and rear yards. Those are together.
11 "Front and rear yards should be located along the width
12 of the lot, shorter dimension."

13 Then it says, side yards, referenced
14 together, "Should be located along the length of
15 the lot, longer dimension." And then it talks about
16 the requirements for making that determination,
17 "Both regardless of lot or building orientation."
18 Then it says why, "So as to provide the greatest amount
19 of buildable area."

20 So -- and I've got this -- I'm a visual
21 learner, Your Honor, so I've got a little handout here.
22 It helps me. I think it's fairly simple, but just
23 in case you're like me and visuals help, so this is
24 a map that was attached to the appeal by the Appellant,
25 Your Honor. It was Exhibit 2 to their appeal, and the

1 highlighted dot is actually their house. But the two
2 lots that I've color coded in red and blue there I think
3 are good examples to show the purpose of this provision,
4 this second sentence of this definition provision.

5 So you see two lots there, both similar size, that are
6 oriented in different ways; one is long wise, and one
7 is up and down.

8 And so this provision says you take the
9 front and rear yards, should be the short dimension,
10 which are in red here, and the side yards should
11 be the long dimension, which are blue. And you make
12 that determination here, regardless of how these lots
13 are oriented, and that's all this is saying.

14 It has nothing to do with determining
15 the front versus the back. This is just about deciding
16 which is the sides, the blue. How do you determine
17 what's the blue? You don't look at the orientation
18 of the lot; you look at the length and the short
19 side and the long side. That's all it's about.
20 This provision doesn't say anything about determining
21 the front versus the back.

22 Now that makes sense, Your Honor, and here's
23 why. Front versus back is naturally an orientation
24 decision. Front and back is about orientation; it's an
25 orientation matter. So clearly the town wouldn't say

1 you can't consider orientation when determining
2 the front versus the back. That's a question of
3 orientation. So it's really just a misreading here by
4 the Appellant of the provision and what the purpose is.

5 Now the town stated in the order the way
6 the town determines front versus the back is based on
7 where the access is to the property and where the main
8 entrance to the primary building is on the property.
9 That's common sense. There's -- the code is silent on
10 how to determine the front versus the back, so the town
11 uses simple common sense, Your Honor, and you can't beat
12 common sense.

13 Now the Appellant's reading here, they would
14 have the town -- say that the town has been doing this
15 wrong all these years, the town has got to ignore the
16 main access point and call the back front just because
17 of the square footage makes no sense at all. And it
18 would defeat the purpose of a setback which, Your Honor,
19 is to make the streetscape look nice. You have
20 a consistency, you want the same setback in the
21 neighborhood.

22 If we read it their way and we went by,
23 you know, the size of how much you can build, it would
24 be different for each lot, and you would have jagged
25 tooth streetscape. That clearly isn't the purpose.

1 So circling back to what I started with,
2 they should seek a variance here. If that's -- if they
3 think their lot is shaped weird or there's some kind
4 of hardship, they can do that. They're not timed out.
5 They could go get a variance. They can apply for it
6 tomorrow, and that's what they should do, but Your Honor
7 should deny this appeal.

8 THE COURT: Okay. So in this particular
9 lot, and I understand the orientation determines, you
10 know, the side yard dimensions. But this particular lot
11 because of the shape, you think the side yard provisions
12 were, in fact, shorter than the front and back?

13 MR. QUISENBERRY: You're talking to me,
14 Your Honor?

15 THE COURT: Yes.

16 MR. QUISENBERRY: There's no dispute that
17 the long -- there's no dispute over what's the sides.
18 It's the north and south.

19 THE COURT: I understand. But when you look
20 at the dimensions, the north and south ---

21 MR. QUISENBERRY: They have longer
22 dimensions, Your Honor.

23 THE COURT: On the north, there's 154 --
24 137, okay?

25 MR. QUISENBERRY: If you want to turn to

1 Page 3, Your Honor, there's another diagram that might
2 help. Page 3 is my brief in the notebook. Page 3.

3 THE COURT: Okay.

4 MR. QUISENBERRY: It shows how the building
5 is oriented on the lot. And you see the north
6 side there in the diagram, which is the longest side,
7 the longest building line, and that is on the north,
8 and those are determined to be the sides. The west
9 and the east are determined to be the front and back.

10 THE COURT: Okay.

11 MR. QUISENBERRY: So that's what that
12 provision says.

13 THE COURT: And they're the longest sides,
14 if you add up all the numbers?

15 MR. QUISENBERRY: Yeah, the north and south.

16 THE COURT: Okay. The town made the same
17 determination that my mother would have made and looked
18 at the front of the house. Now that's the front door,
19 and that's the back door.

20 MR. QUISENBERRY: Yes, sir.

21 THE COURT: But your case -- you're not
22 determining -- looking at the house determines what
23 the front door or the back is. You think by the
24 interpretation of the statute, the front and the back
25 door is as obvious as ---

1 MR. RODE: I think that's precisely
2 the point, Your Honor. And I think that's precisely
3 why this language is in the statute. There was a lot
4 of discussion about -- talking about the front of the
5 house and the back of the house and how front and back
6 is a matter of orientation and how in this diagram we're
7 looking at how these lots are oriented.

8 The statute specifically says regardless,
9 regardless of that. So you've got to go -- this is
10 a purely objective evaluation, purely objective, right?
11 And so, you know, just to touch on a couple of these
12 things, the notion that we need to request a variance,
13 I believe is a little bit disingenuous because the
14 notion that we need to request a variance assumes that
15 this very sentence is not in the statute. The statute
16 already contemplates the notion for how you maximize
17 the buildable area because the town has said so.

18 Second thing, the idea that somehow
19 identifying front and back, that this enhances the
20 streetscape, there is no streetscape. There is no
21 streetscape. This is a landlocked lot, and I don't
22 know, and there's been nothing presented on how the
23 Court had -- how the board has applied this over the
24 years, but that's not what we're here to talk about.

25 What we're here to talk about is, today

1 they applied this statute in a way that simply ignored
2 half of it. Period. And I don't know how else to put
3 it more simply. Their application decreases buildable
4 area. Their application is based upon, as you heard,
5 the access point from the road, orientation of the lot,
6 and access point to the house, orientation of the
7 building on the lot, all three things which are
8 specifically excluded from the determination in the
9 statute. So, I think I would just leave it ---

10 THE COURT: Okay. And I understand your
11 argument, but is the statute anticipating a vacant
12 lot when you start building? So based on this statute,
13 they could have turned the house completely the other
14 way around and built it, but the front goes in the back
15 and the back is the front. But once they choose which
16 way to orient the house, you don't think they're stuck
17 with that as the front and back?

18 MR. RODE: Well, Your Honor, for that,
19 I would point Your Honor to the purpose of the statute.
20 The purpose of the statute and the purpose of creating
21 this special overlay district is because these
22 neighborhoods were built out before the zoning
23 ordinances were put in place.

24 So that determination when they built the
25 house is necessarily germane to a determination under

1 these ordinances, the purpose being to allow the
2 continued construction, addition to, and renovations
3 of homes located in these older built-out neighborhoods
4 between Coleman and the Historic.

5 So it is specifically creating that avenue
6 to say, look, these are old neighborhoods that were
7 built without this in mind. When we apply those
8 variance setbacks we have to, as the statute says,
9 have flexible yard requirements, and they have codified
10 what those flexible yard requirements are.

11 THE COURT: So let me ask -- let's say
12 that you're right and I rule in your favor, and they
13 can build this deck across the setback because the back
14 setback is 25 feet. They want to get into that 25 feet
15 for this deck or porch. Once they do that, does that
16 automatically put the 25 foot on the front of the house?
17 That way they can't go that way. You've got to -- one
18 side has 15 and one side has 25.

19 MR. RODE: That's exactly correct.

20 THE COURT: So if you change it, then
21 they're going to be limited in the way they can go that
22 way, right?

23 MR. RODE: That's 100 percent correct,
24 Your Honor.

25 THE COURT: So that's the ---

1 MR. QUISENBERRY: Your Honor ---

2 MR. RODE: Buildable area ---

3 MR. QUISENBERRY: Doesn't apply to front
4 and back. It doesn't say that. I mean, the Appellant
5 is rewording the provision. It's about determining
6 the sides versus the front. You have four dimensions on
7 the lot, and you have to decide which ones are the sides
8 out of four, and that's what that provision is about.

9 THE COURT: All right.

10 MR. QUISENBERRY: It's not about the front
11 versus the back. That makes no sense. It's an
12 orientation determination. To say the town wouldn't
13 pass that ordinance, that's not a logical way to read
14 that provision.

15 MR. RODE: And to that point, Your Honor,
16 I would simply point out that I would disagree because
17 if that were the case, then the statute would simply
18 say the longer dimension is the side, but it doesn't.
19 And the reason that it doesn't -- and the reason that
20 that second clause is there is because it then makes
21 a difference what's the front and the back when
22 the setback requirements aren't different between
23 one and the other, right?

24 There is -- that clause would have
25 absolutely no purpose in deciding between one side

1 and the other side because the setbacks are identical,
2 right? So applying a ten-foot setback to the left side,
3 then a ten-foot setback to the right side, if you were
4 to swap them, the buildable area is going to remain
5 exactly the same.

6 That's not the case when the front and back
7 -- with the front and back because they have a different
8 setback requirement, which is precisely the reason that
9 that clause has to be there. There would be no reason
10 for that clause to be there if their interpretation
11 of the statute were correct.

12 MR. QUISENBERRY: If I could address that
13 briefly. No one is saying that you have to determine
14 right side versus left side. You've got four sides,
15 four building lines to the property. You have to
16 determine which are the sides versus which are the front
17 and back. You look at my drawing, which are the red
18 lines versus which are the blue lines, and you could
19 see on one it's -- if you apply it based on streetscape,
20 it would smooch the lot.

21 So they say when we're determining the
22 sides versus the front and back, you ignore orientation.
23 But once you make that determination, you use logical
24 sense to determine the front versus the back. It's
25 easy. It's been done that way for years. And then

1 if you ruled against the town here, it would apply town
2 lot, not just to their property.

3 MR. RODE: I don't -- I think the statute
4 says -- if that were the case, it would just say the
5 longest dimension is the side.

6 THE COURT: That's what it says.

7 MR. RODE: It does. But it also says that
8 the shorter dimension is the front ---

9 THE COURT: The front and back ---

10 MR. RODE: And it also says to be determined
11 without regard to lot orientation, building orientation,
12 so as to maximize buildable area. What the statute --
13 what it says.

14 THE COURT: It says without regard to
15 building orientation. So if the house were turned
16 completely sideways, it turned 90 degrees, then it would
17 be facing the side and then the rear would be the other
18 side, based on the statute that the longest one is the
19 sides and the shortest one is the front and back.

20 MR. QUISENBERRY: That's right, Judge.

21 THE COURT: So they don't determine front
22 and back no matter which way the house is sitting.
23 If the house was turned 90 degrees, they still would
24 say the front is the short -- the front and the back
25 are the shorter sides, the sides are the longer sides.

1 That's what he's saying. It doesn't matter where
2 the house is, they look at the lot with no house
3 on it and determine this is the side yard, and this
4 is the front and back.

5 MR. RODE: I agree.

6 THE COURT: Once they make that
7 determination, the second thing is, okay, we've decided
8 that these two ends are the front and back, these two
9 sides -- these longer ones are the sides. Now we've
10 made a determination this is the front and back, these
11 are the sides. Now what is the front of the house?
12 Their position is we look at the house and determine
13 what the front is, and that's where the setbacks
14 are. The front of the house has got 15 foot; the back
15 of the house has got 25.

16 MR. RODE: And to that point, Your Honor,
17 let's go back to what happens when the house is turned
18 90 degrees so that the front is facing the side.
19 That's still a side, and one of the sides is now
20 the side of the house ---

21 MR. QUISENBERRY: And you look at the
22 access, Your Honor, the primary access to the property.

23 MR. RODE: And neither of those
24 determinations affect buildable area.

25 THE COURT: If you turn the house 90

1 degrees, and the house is facing the side, then you
2 build front and back, they can expand the house this
3 way. They just can't expand past the ten-foot side
4 of the property.

5 MR. RODE: And you're assuming that the
6 house came to the zoning ordinances, not the zoning
7 ordinances coming to the house, which is precisely
8 what this special overlay district is about.

9 THE COURT: I understand.

10 MR. QUISENBERRY: Except it isn't in this
11 special overlay district provision. This is
12 a definition. It's in -- along with all the other
13 definitions. It's not a special code or something
14 for this area.

15 THE COURT: Okay. I'll think about it.
16 I'll let y'all know. I understand your argument,
17 and I understand zoning a lot because I was a county
18 attorney for 30 years, and I had a lot of zoning issues.
19 We started zoning in my county, and it was a nightmare
20 for the county attorney because the zoning board would
21 never put anything in the record on how they decided
22 anything, so everything was arbitrary. I said, y'all
23 got to put something in the record. Anyway, thank you.

24 MR. QUISENBERRY: Thank you, Your Honor.

25 MR. RODE: Thank you, Your Honor.

CERTIFICATE OF REPORTER

State of South Carolina)

County of Charleston)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 16th of December, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 19, 2022



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	Civil Action No.: 2021-CP-10-00785
<i>In Re: 520 Whilden St.</i>	)	
in which,	)	
	)	
The Wolfe Marie Vernon Trust is,	)	MOTION TO ALTER OR AMEND
	)	AND/OR FOR CLARIFICATION
Petitioner,	)	(RULE 59(e) SCRCP)
	)	
and	)	
	)	
The Town of Mount Pleasant, and the Mount	)	
Pleasant Board of Zoning Appeals is,	)	
	)	
Respondent.	)	

COMES NOW the Plaintiff, and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and who herein moves the Court to alter or amend its January 10, 2022, Form 4 Order denying Plaintiff's Appeal.

BACKGROUND

This matter came before the Court on appeal from a decision of the Town of Mount Pleasant's Board of Zoning Appeals (BZA) concerning a parcel of real property owned by Petitioner (the "Lot"). The issue before the Court concerned the means by which the Town determined which of the Lot's boundaries would be subject to the "front" setback (15 feet) as opposed to the "back" setback (25 feet). Under Section 156.007 of the Mount Pleasant Code of Ordinances, the BZA decided the West boundary was subject to the "front" setback and the East boundary was subject to the "back" setback.

The BZA's decision was based upon the orientation of the house on the Lot and the orientation of the Lot to the Street. Because the Town's Zoning Ordinances specifically prohibit the determination from being based on "lot and building orientation" the BZA's ruling violated the plain language of the Ordinance. Further the BZA's determination resulted in reducing the

buildable area of the Lot (*i.e.*, increasing the area of the Lot in which building is prohibited by the setback requirements). Because the Ordinance explicitly requires the determination be made “so as to provide the greatest amount of buildable area” the BZA’s decision is violative of the plain language of the Ordinance. Finally, the BZA’s decision is inconsistent and violative of the purpose and intent for which the SR2-OD (the Special Overlay Zoning District in which the Lot is located) was created.

The Petitioner appealed to this Court and raised all of these arguments. In response, the Town (herein “Respondent”) argued, among other things, that notwithstanding the language of the Ordinance, it had the discretion to make the decision in the manner it did, because this is the way it had typically been done. Respondent claimed it needed the authority to make the decision without constraint of the Ordinance so as not to threaten the Town’s beautification efforts. On January 10, 2022, this Court issued a Form 4 Order in which it denied the appeal without explanation.

STANDARD

Rule 59 “motions are applicable when the circuit court sits in an appellate capacity, and they are required to preserve an issue for review by the Court of Appeals or this Court.” *Pikaart v. A & A Taxi, Inc.*, 393 S.C. 312, 324, 713 S.E.2d 267, 274 (2011). The purpose of Rule 59(e), SCRCRCP, to alter or amend the judgment, “is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” *Elam v. S.C. DOT*, 361 S.C. 9, 21-22, 602 S.E.2d 772, 779 (2004) (quoting *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992)). “[A] party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Elam*, 361 S.C. at 21, 602 S.E.2d at 778-79 (“There is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention

to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument.”). When as here, it is unclear whether the trial court ruled on a party’s arguments, a Rule 59 motion should be filed to preserve the arguments for appeal.

THE CONTROLLING ORDINANCE & ARGUMENT

The BZA applied Section 156.007 of the Zoning Ordinance which provides:

BUILDING LINE (includes *SETBACK*). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), **both regardless of lot and building orientation so as to provide the greatest amount of buildable area.**

Zoning Ord. § 156.007 (emphasis added).

I. The Argument offered by Respondent in support of the BZA’s decision is untenable.

Respondent does not dispute (nor can it) that the determination BZA’s decision was based upon was the orientation of the Lot and building. Further Respondent does not dispute (nor can it) that the decision to assign the front setback to the West boundary did not create the greatest amount of buildable area.

Instead, because Respondent cannot justify the BZA’s determination of front vs. back under the plain language of Section 156.007, it takes the position that this Ordinance does not apply to the determination of front vs. back. Respondent claims that this Ordinance only concerns the identification of the “sides” (*i.e.*, for clarity “sides” being those boundaries which assuming a rectangular lot shape would be perpendicular to the front and back). Respondent’s position is that once the “sides” are identified under Section 156.007, that it is then free to decide which of the remaining boundaries is the front and which is the back.

However, this position is untenable. Section 156.007 speaks to the creation of the “Building Line.” The Ordinance plainly describes this as being measured from each of the lot lines to create the area in which the “building or structure must be placed.” Zoning Ord. § 156.007. In order to establish the area in which the building must be located it is fundamental that that all sides be identified. As explained at the hearing, the building line creates a “box” within the Lot and the structure cannot extend outside that box. However, that box (and thus the “Building Line”) cannot be completed without identifying the front and back. Thus, it simply cannot be that Section 156.007 does not speak to identifying the front and back.

II. Respondent’s decision is inconsistent with the plain language of the Ordinance.

“When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used.” *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 10, 776 S.E.2d 753, 758 (Ct. App. 2015) (quoting *Mikell*, 386 S.C. at 160, 687 S.E.2d at 330 (quoting *Charleston Cty. Parks & Recreation Comm’n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995))). A court must “read the statute *as a whole* and in a manner consonant and in harmony with its purpose [and i]n that vein, [it] must read the statute so that no *word*, clause, sentence, provision or part shall be rendered *surplusage*, or *superfluous*, for [legislature] obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.” *Lemmons v. Maced. Water Works, Inc.*, 431 S.C. 186, 197, 847 S.E.2d 471, 477 (Ct. App. 2020) (emphasis original) (internal quotations omitted); *see also Olds v. City of Goose Creek*, 424 S.C. 240, 251, 818 S.E.2d 5, 11 (2018) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”).

Here, the BZA’s ruling contradicts the plain language of Section 156.007 because: (A) its decision does not “provide the greatest amount of buildable area;” and (B) the BZA failed to make

its determination “regardless of lot and building orientation.” *See* Zoning Ord. § 156.007.

A. The BZA’s Order is Contrary to the Requirement of Section 156.007 that Buildable Area Be Increased.

Section 156.007 plainly requires the determination to be made “so as to provide the greatest amount of buildable area.” Zoning Ord. §156.007. “Buildable Area” is defined as “[t]he maximum two-dimensional space on a lot within which a structure or structures can be built, as permitted by applicable setback[.]” Zoning Ord. §156.007. In other words, total lot area minus setback area.

There is no dispute that the North and South boundaries are subject to a side setback of ten (10) feet. The question then becomes, as between the East and West boundaries which is the front, and which is the back? Because “buildable area” is the total area of the Lot minus the setback areas, it becomes significant that the East boundary—at 137.29’ in length—is longer than the West boundary which measures only 110.06’. Thus, simple geometry demonstrates that applying the smaller front setback (*i.e.*, 15’) to the East boundary provides more buildable area than applying the larger back setback (*i.e.*, 25’) as the BZA did. Thus, the BZA’s ruling did exactly the opposite of what is required by the plain language of the Ordinance. *Id.*¹

Only by applying the front yard setback to the East boundary can the command to “provide the greatest amount of buildable area” be satisfied. The BZA’s ruling completely ignores this plain and explicit requirement. This is an error of law. *See e.g., Lemmons*, 431 S.C. at 197, 847 S.E.2d at 477 (confirming that when interpreting and applying an ordinance “that no word, clause, sentence, provision or part be rendered *surplusage*, or *superfluous*, for [legislature]

¹ Because the side setbacks are the same on both sides, the BZA’s error is illustrated by comparing the total front and back setback area produced by treating the East boundary as the back versus treating the East boundary as the front. The calculations speak for themselves and establish that application of the rear setback to the East boundary increases the setback area thus reducing the buildable area, to a greater extent than would apply by application of the rear setback to the West boundary. *See* Appeal at p. 7 fn. 3.

obviously intended the statute to have some efficacy”). Had the Town’s legislature intended a different means of identifying the building lines it would have stated as much. *See Taylor v. S.C. DMV*, 382 S.C. 567, 570, 677 S.E.2d 588, 590 (2009) (“if [the] Legislature had intended [a] certain result in a statute it would have said so”) (citation omitted); *see also State v. Zulfer*, 345 S.C. 258, 262-63, 547 S.E.2d 885, 887 (Ct. App. 2001) (“[H]ad the legislature intended [a statute to produce a certain result] it could easily have limited the statute [accordingly].”).

B. The BZA’s Finding is Specifically Based on the Orientation of the Lot and the House Which is Also Contrary to the Plain Language of the Ordinance.

Section 156.007 requires that the determination of the building lines be made “regardless of lot and building orientation.” However, lot and building orientation is precisely what the BZA based its decision on, reasoning that “the actual front yard of 15 feet allowed by [§] 156.315 (E)(1), in our opinion, would be . . . the access easement side or primary façade of the principal structure designed as the ‘front.’” (BZA Order p. 3). As a threshold matter, because the requirements for establishment of building lines under Section 156.007 is clear and unambiguous, the BZA should not have sought to justify its finding by reference to other sections of the Code. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning.”); *see also, Mikell v. Cty. of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009) (“When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used.”).

III. The BZA’s decision is inconsistent with the stated purpose for which the SR2-OD zoning district was created.

The BZA’s decision is also inconsistent with the purpose for which the Town created the special overlay district in which the Lot is located (*i.e.*, SR2-OD). *See Lemmons*, 431 S.C. at 197,

847 S.E.2d at 477 (requiring a court to “read the statute as a whole and in a manner consonant and in harmony with its purpose”). Specifically, the Town created the SR2-OD to, among other things, “allow for the continued construction, addition to, and renovation of homes located [there]. . . by creating a special overlay zoning classification **with flexible yard requirements.**” Zoning Ord. §156.315 (A) (emphasis added). In serving this objective, Section 156.315 (E)(1) creates a minimum “front yard” requirement of fifteen (15) feet. Respondent seeks to justify the BZA’s decision by claiming it has the authority to make decisions as it wishes in order to “enhance the streetscape.” (Respondent’s Memo pp. 6-7). First, there is no basis for this claim—particularly in the context of this case where the Lot is landlocked. The Lot is simply not a part of the “streetscape” because it is not on a street.

Regardless, Respondent’s assertion is simply wrong. This is plain from the opening words of the Ordinance creating the special overlay district which make it abundantly clear: “**The purpose of the district is to allow for continued construction, addition to and renovation of homes located [there].**” *See* Zoning Ord. § 156.315(A) (emphasis added).

IV. Respondent’s assertion that the Appellants seek a variance is tantamount to an admission that the BZA erred.

Respondent claims that because the Court’s interpretation of the statute would apply town-wide, that Appellant should instead request a variance—rather than asking to have the law applied as written. *See generally* (Respondent’s Memo p. 8). However, this makes no sense. The law is the law and courts must apply it uniformly even when the Town does not. The notion that Appellant is only entitled to the protection of the law by seeking special dispensation is a non-sequitur.

Respondent’s position is fatally circular. The purpose of a variance is to grant an exception to application of the zoning ordinances for a specific lot, when due to some unique aspect of the lot, application of the ordinances would otherwise render the lot unusable for the purposes intended

by the zoning district in which it is located. Thus, Respondent's suggestion that a variance is the proper course can only make sense if it is first assumed that the zoning ordinances otherwise require increasing the buildable area, but that it is only the unique aspects of the Lot that prevent this from happening. However, this demonstrates Respondent's reasoning is fatally circular. If a variance is applicable, it could only be because the Ordinance requires an increase in buildable area, thus, Respondent's contention that their decision is not subject to the Ordinances' requirement of maximizing buildable area is defeated by their own logic.

Moreover, because a variance is, by its very nature, an exception to the application of the Ordinance, a variance would only be necessary here if it were assumed the Ordinance *required* the East boundary be subject to the larger back setback rather than the smaller front setback. However, Respondent has argued that the Ordinance is silent on this point and as a result it is not *required* to designate the East boundary as the back, but rather Respondent asserts it has the discretion to make that decision. (*See* Respondent's Memo in Opp.). Thus, here again Respondent's suggestion that a variance is the proper course serves as a tacit acknowledgment that the arguments it advances in support of its decision are based on flawed and unsupported reasoning and should be rejected.

V. This Court has neither the power nor jurisdiction to rewrite the Zoning Ordinances in favor of the purported public policy considerations advanced by Respondent.

Respondent could point to no provision of the Ordinance to justify the BZA's decision or substantiate the position it took on appeal. Rather, Respondent complains that to apply the Ordinance as Appellant suggests (and as it is plainly written into law) would "end the Town's ability to designate the 'front' vs. the 'rear' based on which side faces the street and/or the primary façade of the home" (Respondent's Memo p. 8). To be certain, the Town's ability to make the determination this way ended when the Town's legislature enacted an Ordinance that required that

decision be made “regardless of lot and building orientation so as to provide the greatest amount of buildable area.” *See* Zoning Ord. § 156.007. It is not for this Court to decide whether it agrees with the legislature’s decision to enact this Ordinance, or even whether it likes the result. This Court is constrained to interpret the law as it is written.

What Respondent is truly seeking and had gained by this Court’s denial of the instant appeal, is for this Court to engage in judicial legislation. To disregard the plain language of the law because Respondent does not like the result should not stand. *See e.g., Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964) (“There is a marked distinction between liberal construction of statutes . . . and the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced. The former is legitimate . . . while the latter is judicial legislation, forbidden by” the law.).

Respondent summarily asserts that to rule for Appellant would “[u]nquestionably [] lead to the diminishment of the beauty of the Town” because it would allow homeowners to orient their homes so as to maximize buildable area. Notwithstanding the utter lack of factual (or even anecdotal) support for this claim, Respondent overlooks that the issues implicated here are limited to the Special R-2 Overlay District in which predominantly all the effected homes have already been built. Moreover, its claim rests on the contention that the “front” must be the boundary facing the street when, to the contrary, the BZA’s own Order stated that orientation to the street is immaterial, and that under the Ordinance even where a parcel’s longer dimension borders the street it would still be considered the “side.” *See* (BZA Order p. 3). Ultimately, if Respondent desires an Ordinance that does not favor maximizing buildable area, then it should submit its arguments to the Town Council, which unlike this Court, can amend the Ordinance. Until then, the Ordinance plainly commands the determination be made “so as to maximize buildable area” and this Court

should apply the Ordinance accordingly rather than re-writing it. Zoning Ord. § 156.007.

This Court's denial of the instant appeal effectually opens the door to permit the BZA to ignore whatever provisions of the law it wants to serve its own agenda rather than applying the law as enacted by the Town's legislature. Neither this Court, nor the BZA (nor any judicial or quasi-judicial body) is afforded such power to nullify the legislature.

THEREFORE, Plaintiff respectfully requests this Court to alter or amend its prior Order, and instead find the BZA is constrained to follow the plain and unambiguous language of the Town's Zoning Ordinances and issue an order granting the instant appeal.

Respectfully submitted,

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Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Mar 29 2022

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2021-CP-10-00785

The Wolf Marie Vernon Trust,.....Appellant,

v.

The Town of Mount Pleasant and The Mount Pleasant Board of Zoning
Appeals,.....Respondents.

NOTICE OF APPEAL

The Wolf Marie Vernon Trust (“Appellant”) appeals the January 10, 2022, Order of the Honorable R. Ferrell Cothran, Jr., from which Appellant filed a Motion pursuant to Rule 59, SCRCF, and which was finally decided on March 21, 2022. Copies of the appealed Orders are attached hereto and incorporated by reference. Appellant received notice of the final Order on March 21, 2022.

s/Thomas J. Rode

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PROOF OF SERVICE

The undersigned certifies that she served a copy of the foregoing **Notice of Appeal** to all counsel of record on March 29, 2022, by mailing a copy of the same, electronically or with proper postage affixed thereto, as follows:

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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No.: 2022-000392

RECEIVED
Dec 14 2022
SC Court of Appeals

Wolf Marie Vernon Trust,

Appellant,

v.

The Town of Mount Pleasant and The Mount Pleasant Board of Zoning Appeals, Respondents.

CERTIFICATE OF COUNSEL

Pursuant to Rule 201(g), SCACR, the undersigned certifies that the Record on Appeal contains all material proposed to be included by any party, unless where duplicative, and not any other material.

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Record on Appeal 104

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Dec 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2022-000392

Wolfe Marie Vernon Trust,

Appellant/Petitioner,

v.

The Town of Mount Pleasant and The Mount Pleasant Board of Zoning Appeals,

Respondents.

PETITION FOR REHEARING

Rehearing is warranted where this Court has misapprehended or overlooked the applicable law. *See* Rule 221, SCACR. Here, the instant Petition for Rehearing should be granted because:

1. **This Court's reasoning is backward.** This Court's opinion suggests it began its analysis by opining on the result it believed should be reached under the purported purpose of the SR2-OD, and then interpreted the definition of Building Line and Setback to meet that desired outcome. However, the tail cannot wag the dog. This Court has misapprehended that the law requires its analysis start, and in this case end, with the plain language of the Ordinance.

2. **This Court's interpretation renders portions of the Ordinance meaningless surplusage.** This Court found the definition of Building Line and Setback does not apply to the location of the Building Line and Setback in this case, but instead only applied to distinguishing the Lot's long and short dimension. However, this Court acknowledged this interpretation left certain provisions—*i.e.*, those to ignore lot and building orientation and maximizing buildable area—to be redundant and meaningless. This Court has overlooked that the law prohibits this Court from interpreting an ordinance in a manner that renders portions of the language meaningless surplusage.

3. **This Court failed to strictly interpret the Ordinance in favor of the Owner.** This Court determined that the Ordinance was silent as to determination and location of the front and rear Building Lines and Setbacks. It therefore created a way to apply the Ordinance based on

nothing more than a zoning official's opinion regarding building and lot orientation as informed by unspecified factors related to the architectural characteristics. This Court condones this being done in a manner that minimizes, rather than maximizes, buildable area, even though none of these factors or directives appear anywhere in the Zoning Ordinances. However, to the extent the Ordinance is silent about the location of the front yard Building Line, this Court's decision is contrary to the law that zoning ordinances be strictly construed in favor of the landowner and interpreted to give the Town only that limited authority which is clearly and expressly set out in the Ordinance.

RE-INTRODUCTION

This appeal arose from a determination by the Board of Zoning Appeals ("BZA") for the Town of Mount Pleasant (the "Town"). The question at issue concerned the location of the "Building Line" or "Setback" on Petitioner's "Lot," at 520 Whilden Street in the Town's Special Residential Overlay District ("SR2-OD").

The SR2-OD contemplates setbacks of 15' for a "front yard" and a 25' for a "rear yard." The location of the Setbacks are delineated by the "Building Line." The Town's zoning Ordinance defines the "Building Line" and "Setback" synonymously as follows:

BUILDING LINE (includes *SETBACK*). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), **both regardless of lot and building orientation so as to provide the greatest amount of buildable area.**

M.P. Zoning Code. § 156.007 (emphasis added).

At issue is whether the Building Line on the Lot should be located 15' from the Eastern boundary and 25' from the Western boundary, or visa-versa. The BZA determined the Building Line was to be 25' from the Eastern boundary—as a "rear yard" setback—based on the belief that the Western façade of the house would typically be considered the "front." Owner/Petitioner takes the position that Building Line should be 15' from the Eastern boundary because this is the only way to give effect to the plain language of the Ordinance which defines the Building Line and

Setback by including a directive that it be “regardless of lot and building orientation,” and to “provide the greatest amount of buildable area.” (*Id.*).

THIS COURT’S OPINION

On November 13, 2024, this Court issued Opinion No. 2024-UP-383 affirming the BZA’s decision to apply the 15’ front yard setback to the Western boundary rather than the Eastern boundary. Importantly, this Court recognizes that its decision **does NOT provide the greatest amount of buildable area** as directed by the ordinance. (Order p. 3) (stating “we acknowledge” that “under this interpretation and application” buildable area is not maximized). Further, it cannot be disputed that this Court’s decision is based on the orientation of the Lot and building.(Order p. 4) (This Court rationalizing its decision because the “the driveway enters the lot on the western boundary” and because the “primary entrance and the typical architectural characteristics associated with the front of a house are located on the ‘west-facing’ side of the [] house.”).

This Court’s reasoning takes the following steps. First this Court opines as to what it believes the proper result should be in the context of the SR2-OD. (Order p. 2) (“we must first determine the [SR2-OD]’s purpose”). Then this Court proceeds to interpret the definition of Building Line and Setback in a manner that obtains the desired result. In doing so, this Court is left to find that the provisions of the Ordinance to ignore lot and building orientation and maximize buildable area only applied to distinguishing the longer versus the shorter dimension. (Opinion pp. 3-4). Finally, this Court concludes the Ordinance is silent on how to distinguish the front from the rear, and therefore “common sense” directs that it be based on lot and building orientation. (Order p. 4) (concluding “because neither the [SR2-OD] nor the definition [of Building Line and Setback]

provide us with guidance on how to determine the front versus rear of a lot, we must use a common sense understanding of the ‘front’ of the *house*”¹).

ARGUMENT

This Court’s Opinion effectively ruled the definition of Building Line and Setback does not apply to questions concerning the location of Building Lines and Setbacks. Instead, this Court holds these provisions only apply to the long and short dimensions. Under this flawed approach this Court directs the determination of front versus rear can, and ostensibly must, be based on lot and building orientation and can minimize buildable. *See* (Order) (finding the same). The practical effect of this Court’s ruling is to re-write the Ordinance as if it said the Front Yard / Front Building Line should be located outside the front façade of the house. Of course, the Town could have written an Ordinance that provided for this, but it did not. Therefore, this Court should grant the instant Petition for Rehearing. *See e.g., Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Envtl. Control*, 411 S.C. 16, 39, 766 S.E.2d 707, 720-21 (2014) (“Our role is to apply and interpret, not rewrite, regulations” and interpretation and application of statutes should be based on the plain language in accordance with its literal meaning).

1. This Court erred because its analysis fails to start with the plain language of the Ordinance.

This Court’s reasoning begins with the assertion that “we must **first** determine the [SR2-OD] ordinance’s purpose.” (Opinion p. 2) (emphasis added). To the contrary, the law of this State

¹ It is telling that this Court suggests the decision should be based on the “front of the *house*.” Plainly, this Court acknowledges the possibility that a house may be situated such that its front façade is oriented toward the “side” of the lot. Moreover, it cannot be forgotten that questions concerning the location of the Building Line and Setback could also arise before any house is built on a lot. Apparently, the Ordinance would be interpreted and applied differently in that case. This just goes further to demonstrate this Court’s analysis is merely an exercise in creating a means to reach the end.

directs the analysis must start with the plain language of the definition of Building Line and Setback.² The Supreme Court of South Carolina has made clear that a Court “**must first attempt to construe a statute according to its plain language**, and if the language of a statute is plain, unambiguous, and conveys clear meaning, [then] ‘**the rules of statutory construction are not needed** and the court has no right to impose another meaning’.” *Odom v. Town of McBee Election Comm'n*, 427 S.C. 305, 310, 831 S.E.2d 429, 432 (2019); citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

The analysis is not limited to the context of the SR2-OD. The definition of Building Line and Setback applies to all parts of the zoning code and all zoning districts, not just the SR2-OD. The force and effect of this definition must be interpreted regardless of the SR2-OD as it applies universally. If Building Line and Setback were intended to have a distinct meaning and interpretation within the context of the SR2-OD then the Town Council would have provided a separate definition within the SR2-OD. But it did not.

Here the plain language of the applicable definition is clear when considered in the context of all other related definitions in the Ordinance. The “front yard” is defined as the space between the lot line and the “front **building line**,” and similarly, the “rear yard” is defined as the space between the lot line and the “rear **building line**.” See M.P. Zoning Code. § 156.007 (emphasis

² None of the cases cited by this Court stand for the proposition that the analysis must begin with a broad analysis of purpose rather than with an analysis of the actual language of the statutory provision at issue. This Court first cites *Arkay, LLC v. City of Charleston*, 418 S.C. 86, 93, 791 S.E.2d 305, 309 (Ct. App. 2016). However, in *Arkay*, the court resorted to the rules of statutory construction to interpret the meaning of an **undefined** term. In the case at hand the terms Building Line, Setback, Front Yard and Rear Yard are all defined. Therefore, unlike *Arkay*, this case does not concern interpretation of an undefined term. This Court also cites *Mikell v. Cty. of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009) and *City of Myrtle Beach v. Juel P. Corp.*, 344 S.C. 43, 47, 543 S.E.2d 538, 540 (2001) neither of which support an analysis that does not begin with the plain language of the subject ordinance/statute.

added). Similarly, the “Buildable Area” is defined by reference to the applicable “**setback.**” *See* M.P. Zoning Code. § 156.007 (defining “Buildable Area” as “[t]he maximum two-dimensional space on a lot within which a structure or structures can be built, as permitted by applicable **setback**”) (all emphasis added).

Because the relevant terms Front Yard, Rear Yard, and Buildable Area are all defined in reference to the defined terms “Building Line” and “Setback” (which the Ordinance defines synonymously in a single section) the analysis must start there. This Court overlooked this. Had this Court properly started with the plain language of the definition of Building Line/Setback, it would have been apparent this Court’s forced interpretation and application is inconsistent with the plain language of the Ordinance.

2. This Court improperly interpreted the definition of Building Line and Setback in a manner that is inconsistent with the plain language of the Ordinance and contrary to the law concerning the interpretation of an Ordinance.

The plain language of the definition of Building Line/Setback directs:

BUILDING LINE (includes *SETBACK*). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), **both regardless of lot and building orientation so as to provide the greatest amount of buildable area.**

This Court has previously held that “we must read [a] statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.” *Lemmons v. Maced. Water Works, Inc.*, 431 S.C. 186, 197, 847 S.E.2d 471, 477 (Ct.

App. 2020) (citation omitted) (quoting *State v. Sweat*, 379 S.C. 367, 377, 382, 665 S.E.2d 645, 651, 654 (Ct. App. 2008)).

In its opinion, this Court opined that the Ordinance’s directive to disregard lot and building orientation and to provide the greatest amount of buildable area only applicable to the determination of distinguishing a lot’s long dimension from its short dimension. As Petitioner has previously explained, the determination of the long versus short dimension cannot possibly be affected by the lot or building orientation. (App. Rep. Br. pp. 9-12); (App. Br. pp. 11-12). Moreover, the long dimension cannot be distinguished from the short dimension in any way that affects the buildable area of a lot—much less in a way that maximized buildable area. (*Id.*). Thus, to find that these provisions only apply when distinguishing the long from the short dimensions is tantamount to holding these provisions are meaningless. (App. Rep. Br. pp. 10-12).

In fact, this Court concedes its interpretation of the Ordinance does exactly that, stating, “we acknowledge the definition is somewhat redundant in explaining how to determine the sides versus front and rear.” (Order p. 4).

As Petitioner’s argument makes clear, it is certainly possible to interpret this definition in a manner that does not make these provisions redundant. Instead, this Court *created* the redundancy by suggesting the definition of Building Line and Setback only applies to distinguishing the long from short dimensions. Herein lies the flaw of this Court’s backward reasoning. These provisions are only redundant because this Court has made them so by forcing a result to match this Court’s desired “purpose” rather than gleaning the purpose from the plain language as the law requires. (*supra*).

This redundancy does not exist in the plain language, nor does this redundancy exist under the interpretation of the Ordinance proposed by Petitioner. Under the Ordinance there is no such

thing as a “long dimension Building Line” or “long dimension Setback;” nor is there such a thing as a “short dimension Building Line” or “short dimension Setback.” It is unnecessary for these provisions to apply to something that is not contemplated by the Ordinance.

This is particularly true where the Ordinance does contemplate Setback for a “front yard,” “rear yard,” and two side yards, and Building Lines for the front, rear, and two sides. In other words, by definition, Building Line and Setback applies to all **four** boundaries of a lot, not just the two long and short dimensions. It only makes sense that the provisions of this definition must also apply to all four sides, not just the two of the long and short dimensions.³ Had this Court interpreted the definition of Building Line and Setback to apply to the actual Building Lines and Setbacks for the front, rear and two sides rather than the short and long dimensions, there would be no redundancy. This is contrary to how the law directs a court to interpret and apply an ordinance. *See Lawrence v. Gen. Panel Corp.*, 425 S.C. 398, 402, 822 S.E.2d 800, 802 (2019) (“[T]he Court should seek a construction that gives effect to **every word** of a statute.”) (emphasis added).

At bottom, this Court has overlooked that the interpretation advanced by Petitioner provides a way to interpret the definition so as not to be redundant. Therefore, this Court should grant the instant Petition for Rehearing.

3. This Court’s opinion fails to strictly construe the Ordinance.

Here, this Court concludes the Ordinance provides no guidance on how distinguish the location of the front Building Line from the location of the Rear Building Line, and therefore this

³ As a practical matter, there can be no real debate over the long versus short dimension. This is a purely objective measure. Moreover, the concepts of long and short dimensions are separately defined under the Ordinance as “Lot Width” and “Lot Depth.” M.P. Zoning Code § 156.007. If the provisions to disregard lot and building orientation and maximize buildable area only apply to the long and short dimensions, why do these provisions not appear in the definition of Lot Width and Lot Depth? *See* (App. Rep. Br. p. 9). This Court ignores this.

Court directs the determination be made based on “a common sense understanding of the ‘front’ of a house.” (Order p. 4). Even if this Court were correct that the Ordinance is silent on this point, the approach this Court invents and adopts to resolve this question is wholly inconsistent with the law’s directive that an ordinance be strictly construed in favor of the landowner.

Specifically, the approach created by this Court to settle the front versus back, directs that it should be based on the orientation of the house and lot and condones applying this approach in a manner that minimizes buildable area and the utility of the lot. The considerations this Court sets out include the location of the “primary entrance,” “the typical architectural characteristics,” the location of the driveway, and the location of the nearest street. (Order p. 4). However, none of these factors appear anywhere in the Ordinance, nor is there any explanation of how these factors are to be weighed or how to resolve debate if these factors are not agreed upon. Further, this Court’s approach would leave the interpretation and application of the statute to yield a different result if there were no house on the lot. Moreover, this Court seemingly leaves the determination and weighing of these factors to the unrestricted discretion of the zoning employee making the determination.

This Court has overlooked that unless a zoning ordinance clearly articulates this approach, the law prohibits the ordinance from being interpreted to give such broad and undefined discretion to the Town. Instead, where the ordinance is silent, it must be interpreted in favor of the owner. This Court has recognized that

“statutes or ordinances in derogation of natural rights of persons over their property are to be **strictly construed** as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It [therefore] follows that the **terms limiting the use of the property must be liberally construed for the benefit of the property owner.**”

Helicopter Sols., Inc. v. Hinde, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (Ct. App. 2015) (quoting *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953) (emphasis added). “[W]hile [l]ocal governments have wide latitude to enact ordinances regulating what people can do with their property, **they must draft their ordinances so that people can have a clear understanding as to what is permitted and what is not. Otherwise, we must construe such ordinances to allow people to use their property so as to realize its highest utility.**” *Id.* (quoting *Keane/Sherratt P'ship by Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987) (emphasis added).

In this case, rather than look to the plain language of the definition of Building Line and Setback, this Court took a backward approach. Crafting an interpretation of the definition that conformed to its desired result, rather than applying the plain language of the Ordinance, this Court created a redundancy in the Ordinance rather than interpreting the Ordinance in a way that avoided this redundancy. This improper approach failed to strictly interpret the Ordinance in favor of the homeowner as required by law. *See id.* In doing so this Court has left the Town’s Zoning Ordinances regarding Building Lines and Setbacks to apply based on nothing more than the whims and opinions of the employees of the zoning department. That is not how the law works.

CONCLUSION

For these reasons, together with those set forth in Petitioner’s Appellate Brief and Reply Brief (which are incorporated herein by reference) this Court should grant the instant Petition for Rehearing and reissue an opinion finding the Building Line is located 15’ from the Eastern boundary.

[signature to follow]

Respectfully submitted,

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The South Carolina Court of Appeals

Wolfe Marie Vernon Trust, Appellant,

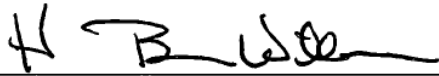
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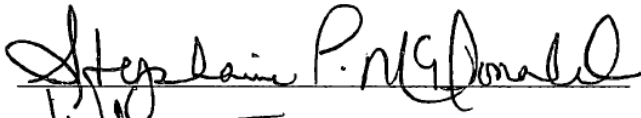
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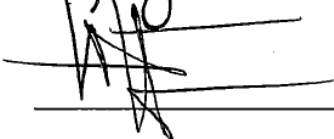
Appellate Case No. 2022-000392

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.

 J.

 J.

Columbia, South Carolina

cc:

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The Honorable R. Ferrell Cothran, Jr.

FILED
Jan 30 2025