THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2025-000394
Circuit Court Case No. 2021-CP-10-00785

The Wolf Marie Vernon Trust,

Petitioner,

v.

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

Respondents.

RETURN TO PETITION FOR WRIT OF CERTIORARI

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No.: 66468)
Brian L. Quisenberry (SC Bar No.: 73637)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina, 29401
P.O. Box 993, Charleston, SC 29402
(843) 720-5488
Attorneys for Respondents

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

STATEMENT OF THE CASE

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/Petitioner The Wolfe Marie Vernon Trust's ("Petitioner") petition for writ of certiorari to the Court of Appeals. Petitioner wishes to make additions to a home which it owns in the Special R-2 Overlay Zoning District ("SROZD" or "District") located in the Town. In simple terms, Petitioner wishes to treat the front of the home's lot as the back and the back of the home's lot as the front.

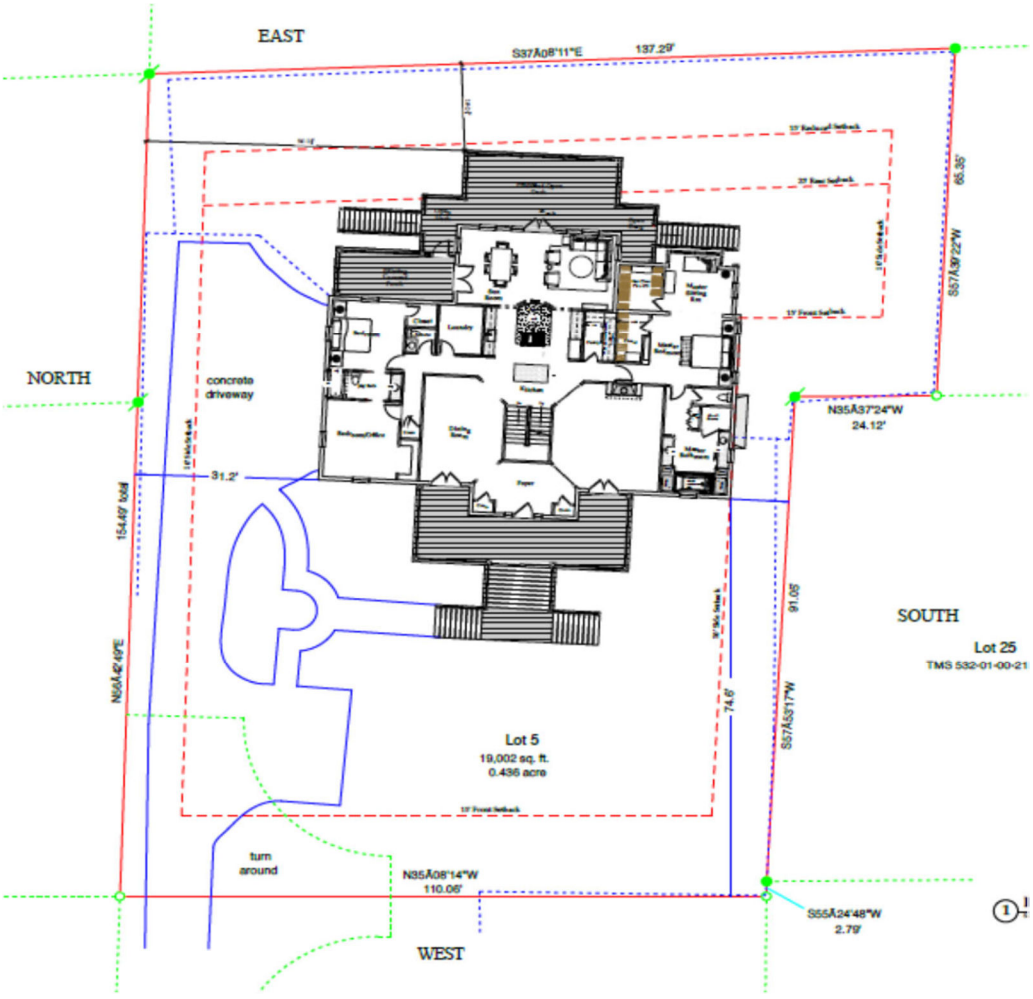
To do so, Petitioner realized it required a permit from the Town. Petitioner made an application to the Town's Zoning Official for such a permit, which was denied. Petitioner then appealed the Zoning Official's determination to the BZA. (App. pp. 83-120.) The BZA upheld the Zoning Official's interpretation and application of the Code. (App. pp. 79-81.) Petitioner then appealed the BZA decision to the Circuit Court. The Circuit Court likewise denied Petitioner's appeal. (App. pp. 64-66.) This was followed by an appeal to the Court of Appeals. After hearing oral arguments on the appeal, the Court of Appeals again affirmed the decision of the Circuit Court upholding the BZA and Zoning Official's decision. (App. pp. 1-5.) The Court of Appeals did so, after hearing oral arguments, in an unpublished *per curiam* opinion with no dissent.

No special or important reason exists for this Supreme Court to grant a Petition for Writ of Certiorari to review a decision which has been reviewed and affirmed at three levels (BZA, Circuit Court, Court of Appeals). This case does not present a novel question of law, and the Court of Appeals' decision has no dissent and is consistent with prior decisions of this Supreme Court and statutory authority. Likewise, there is more than ample evidence in the record to support the decision of the BZA. (App. pp. 93-118.) 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 any evidence in the record to support its decision), *aff'd* 372 S.C. 230, 642 S.E.2d 565 (2007). None of the considerations of Rule 242(b), SCACR, are present in this case. Accordingly, this Supreme Court should exercise its sound judicial discretion and deny the Petition for Writ of Certiorari.

STATEMENT OF FACTS

The Petitioner's lot is only accessible via an access easement roadway and does not border a public street. Petitioner's property is as follows:



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. (App. pp. 119-120.) The "East" end of the property contains a border with a neighboring property and no access. Petitioner seeks to build an addition to their residence on the "East" side of the property. Petitioner 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 and the back of the lot.

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. (App. pp. 88-90.) The BZA affirmed the Zoning Official's decision and denied the Petitioner's appeal. (App. pp. 79-82.) The Circuit Court affirmed the ruling of the BZA. (App. pp. 64-92, 164-165; App. pp. 129-153.) In an unpublished *per curium* decision, this Court of Appeals likewise affirmed the BZA decision. (App. pp. 1-5.)

ARGUMENT

I. The Court of Appeals Properly Applied Applicable Law in Deciding this Case.

Petitioner's initial argument to the Supreme Court is hyperbole relating to the way the Court of Appeals allegedly went about deciding this case. Specifically, Petitioner claims that the Court of Appeals engaged in an "exercise in creating a mean to reach the end it desired; "usurped the Town's legislative authority;" engaged in "judicial activism"; "drafted legislation" and acted like "Oz", with the Court of Appeals being "the man behind the curtain". Review of the opinion issued by the Court of Appeals demonstrates it did not determine a result and then reverse engineer reasoning to support it. While the use of such dramatic language seems to be the new

normal for anyone unhappy with or disagreeing with judicial decisions, or in this case a decision upheld on three separate occasions by three separate judicial or quasi-judicial bodies, it provides no basis for this Supreme Court to grant certiorari.[1]

Petitioner argues the Court of Appeal's opinion is flawed in that it started its determination of whether the Board improperly denied its request by determining the SROZD's purpose. This argument is without merit as the Court of Appeals merely determined what the SROZD was meant to address. As noted in argument two, Petitioner raised this very issue. In doing so, it went no further than the clear and unambiguous language used in the ordinance. This provides no basis for this Supreme Court to act as a super board of zoning appeals.

The Petitioner 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." Petitioner points to the definition of "Building Line" in §156.007 of the Mount Pleasant Code of Ordinances ("Code"). This section 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***.

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

[1] *See Wyndham Enterprises, LLC v. City of North Augusta*, 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012)(discussing quasi-judicial role of BZA).

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 Petitioner'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'.

(App. pp. 79-82.)

Applying the Town's interpretation to Petitioner's property, the longer lengths of the property are the North and South lot lines. The Court of Appeals found these determinations supported both by the evidence in the record and a common sense reading of the Code. Those lot lines are the "sides" of the property. 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 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 Petitioner'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, as the Court of Appeals recognized, Mount Pleasant's Code 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). Again, the Court of Appeals did not engage in judicial activism or legislate from the bench as Petitioner claims, but merely applied applicable law to determine if any evidence supported the decision of the BZA.

The Zoning Official and BZA determined the west end of Petitioner'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 standardless approach throughout the District.

Petitioner seeks to have the rear designated as the "front" to gain the relaxed fifteen (15) feet minimum setback for front yards in the District. Petitioner 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 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). Petitioner's proposed interpretation would do just that in this case. As such, certiorari should not be granted.

II. The Purpose of the Special Overlay District is to Enhance the Streetscape and Create a Pedestrian Friendly Environment.

Petitioner argues no consideration should have been made concerning the purpose of the SROZD, **yet it argued to the Court of Appeals that the BZA's decision is "inconsistent with the purpose for which the Town created the [SROZD].[2]"** (emphasis added). (App. pp. 22-23.) In essence, it argued on appeal the BZA failed to consider the intent of the SROZD and then argues the Court of Appeals should not have looked at the Code's intent. The provision containing the purpose of the SROZD provides:

> 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**.[3]

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

The phrase "flexible yard requirements" references the reduced setback requirements contained in the SROZD as compared to other zoning districts in the Town. For example, the setback requirement of fifteen (15) feet in the front yard in the SROZD is *less stringent* than the twenty-five (25) feet setback requirements for front yards in other districts within the Town.[4] By reducing the restrictions on front setbacks, the Town relaxed the yard requirements in the SROZD to create an enhanced streetscape and pedestrian friendly environment envisioned by this Code provision. That is what the phrase "flexible yard requirements" means. It does not

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[2] For consistency, the variety of acronyms used for the provision in issue of the Code have been changed to SROZD or District.

[3] *See* Mount Pleasant Code of Ordinances §156.315(A) (Emphasis Added).

[4] *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.).

mean the Town must make the front and back lot line determinations to maximize the Petitioner's buildable area or suit their plans for home expansion.

Furthermore, "flexible yard requirements" (i.e smaller front yard setbacks) is not the "purpose" of the SROZD as Petitioner contends. Rather, the smaller setbacks contained in the ordinance *lead to* the purpose of the SROZD. ("***This will lead to an enhanced streetscape and a pedestrian-friendly environment***."). The purpose of the District, therefore, is to create an enhanced streetscape and pedestrian-friendly environment. It is not to allow one to simply maximize buildable space by simply making a mathematical determination of which lot line should be the front and the rear with no other considerations. One can only imagine the incongruous results which would result from such an interpretation were applied in future cases. *See e.g. Restaurant Row Assoc. v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999) (zoning considerations apply not only to current but future conditions as well). The purpose of the SROZD was properly considered by the Court of Appeals as Petitioner made this a primary issue in this appeal.

The BZA's decision was consistent with the purpose of the SROZD. The BZA's decision keeps the street facing and roadway easement access side of Petitioner's property as the "front", which is where the relaxed set back is applied. Under Petitioner's interpretation, the street facing side of any property in the District could be designated the "rear" and the back side the "front" because Petitioner 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 District to face in different directions with no homogeneity or uniformity, which would defeat the purpose of the SROZD.

III. The Issue of Free Use of Land is not Preserved and further has no Applicability in this Case.

For the first time in its Petition for Rehearing to the Court of Appeals, Petitioner raised the issue of whether erred in not strictly construing the SRZO as an ordinance which limits the free use of land in favor of the owner. (App. pp. 168-169, 175-177.) In its opinion, the Court of Appeals did not address this issue, as it was not raised in Appellant-Petitioner's Initial or Reply Briefs. An issue may not be raised for the first time in a petition for rehearing. *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 564 S.E.2d 322 (2001); Rule 221(a), SCACR. Likewise, an issue not raised and preserved initially cannot form the basis for a grant of certiorari. *Cf. Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011). In that this issue is not properly raised or preserved, it should be summarily denied as a basis for a grant of certiorari.

On the merits, the SROZD is an ordinance which grants rights over and above those found in the Code. But for the creation of this overly district, all property owners would be required to have 25 feet setbacks for their front and rear yards. The SROZD allows for less restrictive setbacks on the front side of the property to enhance streetscapes and lead to a pedestrian friendly environment. Petitioner's failure to comprehend the application of the SROZD or its belief that it is entitled to any interpretation of the Code favorable to it and which allows it to renovate and rebuild this home as it would like is not synonymous, in any manner, with denying it the free use of its land. *See e.g. Dunes West Golf Club, LLC v Town of Mount Pleasant*, 401 S.C. 280, 737 S.E.2d 601 (2013); *Ani Creation, Inc. v. City of Myrtle Beach Board of Zoning Appeals*, 440 S.C. 266, 890 S.E.2d 748 (2023). If this approach was correct, there would be no appeals of zoning interpretations as the landowner would always be entitled to prevail in zoning cases as "free use of land" could always be argued against any restriction or

interpretation inconsistent with their plans for the property. Such is clearly not the law. The petition for writ of certiorari should be denied.

CONCLUSION

Based on the foregoing reasoning and authority, Respondents respectfully request that this Supreme Court deny the petition for writ of certiorari and allow the decision of the Court of Appeals affirming the decision of the BZA and the Circuit Court to stand.

CLEMENT RIVERS, LLP

By: *s/Stephen L. Brown*
Stephen L. Brown (SC Bar No.: 66468)
Brian L. Quisenberry (SC Bar No.: 73637)
Russell G. Hines (SC Bar No.: 72100)
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

April 14, 2025

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PROOF OF SERVICE

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No.: 66468)
Brian L. Quisenberry (SC Bar No.: 73637)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina, 29401
P.O. Box 993, Charleston, SC 29402
(843) 720-5488
Attorneys for Respondents

I, Stephen L. Brown, of Clement Rivers, LLP, attorneys for Respondents, hereby certify that **RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI** was served on all other parties to this appeal on April 14, 2025, via email (see attached) to their following counsel of record:

Michael A. Timbes (michael@tktlawyers.com)
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401

Attorney for Petitioner

I also certify that Respondents' **RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI** and **PROOF OF SERVICE** were filed with the South Carolina Court of Appeals on April 14, 2025, via email (see attached) to ctappfilings@sccourts.org.

Respectfully submitted,

CLEMENT RIVERS, LLP

By: *s/Stephen L. Brown*
Stephen L. Brown (SC Bar No. 66468)

Attorneys for Respondents

Charleston, South Carolina

April 14, 2025

Bell, Pollyana (Polly)

From: Bell, Pollyana (Polly)
Sent: Monday, April 14, 2025 5:01 PM
To: 'thomas@tktlawyers.com'; 'kaitlyn@tktlawyers.com'; 'michael@tktlawyers.com'
Cc: Brown, Stephen L.; Quisenberry, Brian; Hines, Russell; Justman, Aimee; Justman, Barbara
Subject: Wolfe Marie Vernon Trust v. Town of Mount Pleasant; Sup. Ct. Case No. 2025-000394, Ct. App. Case No. 2022-000392 (CR 210600)
Attachments: Return to Petition for Writ of Cert.pdf

Enclosed please find Respondents' Return to Petition for Writ of Certiorari for service upon you in the above-referenced matter.

Thank you,

Pollyana Bell

Legal Secretary to Stephen L. Brown,
Russell G. Hines, Stephen A. Griffith, Jr.
Commercial Litigation Practice Group
Phone:(843)720-5488 | Fax:(843)579-1369
CLEMENT RIVERS, LLP
25 Calhoun Street • Suite 400 • Charleston, SC 29401
ycrlaw.com