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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. 2022-000394

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.

PETITIONERS' REPLY
IN SUPPORT OF PETITION FOR CERTIORARI

According to Respondents, this Court should not accept review of this action because three separate judicial or quasi-judicial bodies ruled against Petitioner. Respectfully, that three judicial or quasi-judicial bodies ignored the plain language of the Ordinance on three separate occasions contrary to well-settled law is what makes the case for why this Court should grant the Petition for a Writ of Certiorari.

- I. The Court of Appeals erred by elevating a forced construction of the Ordinance over its plain language, which should have been enforced as it was written, not as the Court of Appeals envisioned.**

The Court of Appeals began its analysis by determining what it perceived as the purpose of the Ordinance, rather than first considering the plain language of the Ordinance. (Appx. p. 2).

This was error. *Odom v. Town of McBee Election Comm'n*, 427 S.C. 305, 310, 831 S.E.2d 429, 432 (2019) (instructing that a Court “must first attempt to construe a statute according to its plain language”). “The plain language of a statute is considered the best evidence of the legislature’s intent. *Perry v. Bullock*, 409 S.C. 137, 140, 761 S.E.2d 251, 253 (2014) (citing *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 538, 725 S.E.2d 693, 697 (2012)). Where the language of a statute “is plain, unambiguous, and conveys a clear meaning, ‘the rules of statutory interpretation are not needed and the court has no right to impose another meaning.’” *Odom*, 427 S.C. at 310-11, 831 S.E.2d at 432 (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation.” *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 525-26, 642 S.E.2d 751, 754 (2007).

In the simplest sense, the Ordinance plainly and unambiguously requires that front yard and rear yard building lines must be located “**so as to provide** the greatest amount of buildable area” on the lot. M.P. Zoning Code. § 156.007 (emphasis added). No part of this directive is unclear, and no other determining factors are included in the text. Respondents, just like the Court of Appeals, place their perceptions of the Ordinance’s purpose over the plain language of the Ordinance itself, which is contrary to the first rule of statutory construction. *Perry*, 409 S.C. at 140, 761 S.E.2d at 253.

When proper rules of construction are followed, the location of the front and rear Building Lines in this case is controlled by which result yields “the greatest amount of buildable area” on the lot: locating the front yard Building Line on the East Boundary or the West Boundary?¹ Where,

¹ Reference is made to Figure 2 from Petitioner’s Petition for Writ of Certiorari for a visual depiction of this issue. (Appx. p. 92).

a lot is irregularly shaped, as here, this is particularly true because it is function of basic math. And, no party disputes the resulting computation—the East Boundary as the front Building Line yields the greatest buildable area as instructed by the Ordinance.²

Here, not only did the Court of Appeals reach a decision that fails to yield the greatest buildable area, but it did so by employing an improper construction that turned on the Court’s “common sense” understanding of what should be the “front” of a house. The zoning official and the BZA made this same mistake. Ignoring the plain language of the Ordinance, the Court of Appeals proceeded to locate the “front” of the house *by considering* how the building was oriented on the lot and *did not consider* maximum buildable area, compounding the error. The Court took into account matters like the location of the driveway, the location of the primary entrance to the home, and typical architectural characteristics of the home, although none of these factors are referenced in the Ordinance. The notion that a “standardless approach” would come from applying the plain text of the Ordinance as requested by Petitioner is preposterous. (Resp. Return to Pet., p. 6). To the contrary, its just math, and the location of the front and rear building lines is controlled by whichever yields the greatest amount of buildable area. To consider driveway locations, entrances, and architectural features, etc., is to disregard the clear instruction to ignore the orientation of the lot and building. Under Respondents’ view, it is the single zoning official and the BZA that retains power to manipulate outcomes based on their perception of what is, or is not, common sense. Petitioner’s mathematical approach is not only expressly required by the Ordinance, but it also removes the very threat raised by Respondents in their Return. Had the

² The Court of Appeals admits its decision does not accomplish this clear directive. “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” (Appx. p. 3) (all emphasis added).

Town desired the approach advanced by Respondents, it would have written the Ordinance that way.

In essence, the Court of Appeals went down a path that the Ordinance instructs must be avoided. Consideration of where the driveway or primary entrance is placed requires evaluation of the orientation lot and building, when the Ordinance commands that neither is to be considered. Therein lies the plain error of the Court of Appeals' decision. There is nothing ambiguous about the Ordinance's mandate that locating the front and rear building lines in a manner that yields the greatest buildable area is to be done "**regardless of lot and building orientation[.]**" M.P. Zoning Code § 156.007. (emphasis added).

Locating the front and rear Building Lines based on a "common sense" understanding of what is the "front" of a house is incongruent with this directive to ignore lot and building orientation. Doing so in a manner that elevates a smaller buildable area over a larger available buildable area is manifest disregard of the plain language of the Ordinance. This highlights the Court of Appeals' error in grounding its decision on a perceived view of the "purpose" of the Ordinance, especially where the analysis turns on the orientation of the building on the lot and does not maximize buildable area as instructed.

Determination of whether the front Building Line lies on the East Boundary or the West Boundary would never have any effect on establishing the long versus the short dimensions of the lot for purposes of locating the side yards. In fact, as explained in detail, the determination of the long versus short dimension is not in dispute and would never be affected by the lot or building orientation. (Appx. pp. 19-20; 52-55). By focusing its attention on *this* portion of the Ordinance, the Court of Appeals' interpretation yields redundancy and surplusage. The Court of Appeals concedes this point. (Appx. p. 4) ("[W]e acknowledge the definition is somewhat redundant in

explaining how to determine the sides versus front and rear.” See *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) (instructing, “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.”

To avoid this redundancy and give meaning to the plain language used in the Ordinance, the front and rear Building Lines must be located “regardless of lot and building orientation” on the lot “so as to provide the greatest amount of buildable area.” M.P. Zoning Code § 156.007. This is not just Petitioner’s point of view; this is what the Ordinance instructs. There would be no redundancy if the Court of Appeals had simply applied the directive to ignore building and lot orientation and maximize buildable area within *all four* boundaries of a lot (and not just the two long and short dimensions). This is the only interpretation that gives effect to the plain language used, especially in light of the supplied definitions of Building Line and Setback, which apply to *all four* boundaries of the lot (not just long dimensions and short dimensions).³

Although “primary façade” is used in other sections of the Ordinance, nowhere does the Ordinance reference the “primary façade” of a building in the sections concerning Building Line, Setback, or Front Yard. By focusing on its “common sense” view of the “front” of the house, the Court overlooked this important fact. Compounding the error, the Court of Appeals inexplicably

³ The long dimensions and short dimensions of a lot can be determined objectively, even with an irregularly shaped lot, as here. These are not in dispute. However, the maximum buildable area may differ based on the designation of the front Building Line versus the rear Building Line. Respondents’ view completely ignores the requirement to provide the greatest amount of buildable area *regardless* of lot or building orientation.

opined that the Ordinance is silent on how to determine the front and rear of a lot. (Appx. p. 3). This is manifestly wrong.

The provision at issue plainly states, “**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),⁴ both regardless of lot and building orientation so as to provide the greatest amount of buildable area.” Here, this is not disputed. Whether the front yard is located along the East Boundary or the West Boundary, either way it will be located along the shorter dimension. The question before the Court is along which of those boundaries should the front yard and its 15’ Building Line be located. The answer should be simple, because it is undisputed that utilizing the East Boundary for the front Building Line (which associates with the front yard) “provides the greatest amount of buildable area.” When the Court of Appeals evaluated the orientation of the building to reach the opposite result, it violated the mandate to ignore the “lot and building orientation” and proceeded to endorse a result that does *not* yield the greatest amount of buildable area. This is wrong. The Ordinance is *not* silent on this issue—it commands designation of the Building Line for the front yard along the boundary that yields the *greatest* buildable area without consideration of the building orientation. Here, that is the East Boundary.

II. Petitioner’s argument that Court of Appeals failed to strictly construe the Ordinance in accordance with settled law is properly before the Court.

⁴ Furthermore, “front yard” is defined as the space between the lot line and the “front building line,” and “rear yard” is defined as the space between the lot line and the “rear building line.” M.P. Zoning Code. § 156.007. “Buildable Area” is determined by reference to the applicable “setback.” *Id.* (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”). To create the greatest amount of buildable area within the building line setbacks, the front and rear yards are located regardless of lot and building orientation. *Id.* Nothing in the text limits or qualifies this approach.

As explained above, the Ordinance plainly provides how to locate the front and rear of a lot for purposes of maximizing the buildable area. For this reason, the Court of Appeals was simply wrong to conclude that the Ordinance is *silent* on this point. (Decision, p. 4) (“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.”). Building upon this mistaken foundation, the Court of Appeals then employed an analysis that is without support in the text of the Ordinance itself to justify its ultimate interpretation of the Ordinance (*i.e.*, considering the primary entrance, typical architectural characteristics, and the location of the driveway).

No prior ruling concluded the Ordinance lacked guidance on locating the front and rear yards.⁵ Until the Court of Appeals embarked down this errant path in its decision, this argument was unnecessary. Petitioners could not have predicted that the Court of Appeals would take this approach in its decision, and Petitioners need not challenge an error before it is made. *C.f.*, *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011) (“We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner.”). In *Herron*, the Supreme Court did not consider the issue of preemption because the argument was never made before the Court, even though it could have been. *Id.* at 470, 719 S.E.2d at 645 (noting “[h]ere, intentionally or by chance, Appellant kept the ace card of preemption up its sleeve until after this Court filed its opinion.”). The opposite is true in this instance. Until the Court of Appeals ruled the Ordinance was silent on how to locate the front and rear yards, which the Court used as

⁵ The Board of Zoning Appeals merely affirmed the Zoning Official, who concluded the front yard should be “the side from which the access to the lot is provided” despite acknowledging that “the definition [in the Ordinance] notes that the setbacks are applied ‘regardless of lots and building orientation’[.]” The Circuit Court issued a Form 4 Order simply stating in its entirety, “Appellant’s appeal from the Mount Pleasant Zoning Board is DENIED.”

justification to consider other factors found nowhere in the Ordinance's text, Petitioner had no need to confront the Court of Appeals' failure to strictly construe the Ordinance as required by law. While this point first appears in Petitioner's request for reconsideration to the Court of Appeals, this is only because the Court's decision first raised the need.

CONCLUSION

For the reasons set forth herein and previously asserted, Petitioners request that this Court grant the instant Petition for Writ of Certiorari.

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