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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM OCONEE COUNTY  
Court of Common Pleas  
The Honorable J. Cordell Maddox, Jr.

Case No. 2022-CP-37-00396  
Appellate Case No. 2022-001796

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John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff,  
Lucretia B. Morgan, Sherri Akers Crisp, and Amy Cawthon,

Appellants,

v.

Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC, Globe, a  
South Carolina Limited Partnership, and Farnes, a South Carolina Limited Partnership,

Respondents.

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FINAL BRIEF OF APPELLANTS

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## STATEMENT OF ISSUES ON APPEAL

- I. In approving a road variance request, the Oconee County Board of Zoning Appeals (“BOZA”) adjudicated a predicate factual and legal dispute concerning whether Oconee County holds a prescriptive easement over a privately owned section of Ellenburg Road. Was this adjudication outside of the BOZA’s limited statutory jurisdiction?
- II. A prescriptive easement must be proven by clear and convincing evidence. The BOZA approved a variance request based on an assumption that Oconee County holds a prescriptive easement over Ellenburg Road. Was it error for the BOZA to assume the existence of a prescriptive easement rather than require proof of each element by clear and convincing evidence?
- III. The BOZA determined that Oconee County holds a prescriptive maintenance easement over Appellants’ privately owned dead-end road. From this maintenance-easement, the BOZA then granted a road variance request for an eventual nineteen-home subdivision with an estimated 200 vehicle trips per day across this previous dead-end road. Was it error for the BOZA to unilaterally increase the easement burden on Appellants’ private road?
- IV. Appellants presented drawings to the BOZA showing that Respondent’s proposed roadway was nine feet too narrow and that it would either have to be built on Appellants’ property or on top of fill poured into Lake Keowee. The BOZA refused to analyze the detrimental impact if the roadway is built on Appellants’ property. Was this decision arbitrary, capricious, and an abuse of discretion?

## **INTRODUCTION AND STATEMENT OF THE CASE**

This is an appeal from an Oconee County Board of Zoning Appeals' ("BOZA") order, (hereinafter, "Variance Order"), granting road variance application #VA21-011 (hereinafter, the "Variance Application") for the eventual construction of a new public road to service a proposed nineteen-home subdivision on Lake Keowee. This new public road would tie directly into Appellants' (hereinafter, the "Ratliff Family") private driveway and turn it into a public road. The Ratliff Family and adjacent owners own the private driveway, and James Ratliff owns and operates John's Marine at the dead end of Ellenburg Road—the location of the proposed new public road. The Ratliff Family objects to Oconee County turning their private driveway into a public road for nineteen new homes.

Ridgewater Engineering & Surveying, LLC ("Ridgewater") applied for a road width variance for the construction of a new public road to service a future nineteen-home subdivision on Lake Keowee. Oconee County ordinances require public roads to have 50-foot or right-of-way and the arrowhead shaped property to be developed has a narrow section of approximately 31.9' adjacent to the Ratliff Family's property. Ridgewater requested a variance for the public road to be 18.1' narrower at this location. Based on the size of the proposed subdivision, the developer must tie in its new road directly into the public road system. Ridgewater contended that this requirement was met because Oconee County has a prescriptive easement for maintenance for the entire length of Ellenburg Road that could be extended to the new proposed road. However, the Ratliff family informed the BOZA that their family paved the section of Ellenburg Road in front of their properties in the 1980s and have continuously maintained it ever since, and that Oconee County has never maintained this section of Ellenburg Road. The BOZA met three times on this variance—the first two times delaying a vote for additional information on the existence of a prescriptive easement. The Ratliff Family presented information and documents to BOZA

reflecting their ownership and maintenance of the road. Oconee County presented no documents or testimony of ever having performed maintenance on this section of Ellenburg Road and only relied on “institutional memory.” At the third meeting on the variance, the BOZA voted to approve the variance over the Ratliff Family’s objection and despite the lack of evidence of a prescriptive easement. This appeal followed.

The central issue in this appeal is whether Oconee County has a prescriptive easement over a paved section of Ellenburg Road that is privately owned by the Ratliff Family and the adjacent property owners/Respondents—Globe, a South Carolina Limited Partnership, (“Globe”), and Farmes, a South Carolina Limited Partnership, (“Farmes”). The paved private driveway is partially on the Ratliff Family’s property (585 Ellenburg Road and 599 Ellenburg Road) and partially on property owned by Globe and Farmes, with the majority of the paving on the Ratliff Family’s property (hereinafter, the “Private Driveway”). The Ratliff Family and their predecessors in interest paved the Private Driveway in the 1980’s and have maintained it ever since.



**Board of Zoning Appeals Hearings**

On April 25, 2022, the BOZA granted Ridgewater’s Variance Application for a variance of 18.1’ from the 50’ right-of-way required for construction of a new public road. Ridgewater sought the variance as an agent for Globe and Farnes. The new public road would service a currently undeveloped 15-acre arrowhead-shaped peninsula on Lake Keowee referred to as

“Arrowhead Point.” The “stem” section of this tract is adjacent to 585 Ellenburg and 599 Ellenburg and the “body” is to the northeast and juts out into Lake Keowee. The new public road would connect an eventual nineteen-home subdivision to the existing paved private section of Ellenburg Road that dead ends at John’s Marine. The Variance Application initially came before the BOZA on November 30, 2021, then again on January 24, 2022, and finally for a vote on April 25, 2022.

**November 30, 2021 BOZA Meeting**

On November 30, 2021, the Variance Application was first placed on the BOZA agenda. During this first meeting, the BOZA heard from representatives from Lake Keowee Real Estate, the developer of Arrowhead Point, about the requested variance and the proposed plans to construct a new public road to service an eventual nineteen-home subdivision on the 15-acre peninsula past John’s Marine. (R. p. 639, line 18-p. 640, line 5; p.754, line 20-p. 755, line 1). The developer asserted that Oconee County has a prescriptive easement over the Private Driveway in front of the Ratliff Family’s properties up to the point where the pavement and road dead ends, which is where proposed new public road would be placed. (R. p. 642, lines 7-13; p. 746, line 24-p.747, line 4).

During public comments, the Ratliff Family informed the BOZA that they disputed that Oconee County holds a prescriptive easement over their Private Driveway. (R. p. 660, line 22-p. 661, line 5; p. 663, line 9-p. 664, line 22). The Ratliff Family brought to BOZA’s attention the fact that: (1) their family members, or predecessors in interest, had paved and maintained the Private Driveway for the last forty years, (R. p. 678, line 25-p. 680, line 3; p. 684, line 21-p. 685, line 11); and (2) Ellenburg Road itself reflected the difference between County and non-County maintained travel surfaces where the pavement quality differs and where the County stopped its

centerline yellow road striping at the location where the Private Driveway begins, (R. p. 663, line 9-p. 664, line 5; p. 679, lines 4-9; *see also* R. pp. 138-144 (images of the road striping)).

The Ratliff Family also raised concerns about (1) BOZA's jurisdiction to grant a variance affecting two private parties, (R. p. 688, line 22-p. 689, line 9); (2) the legality of moving forward to consider the Variance Application without first showing that Oconee County had a prescriptive easement over the Private Driveway, (R. p. 664, lines 5-22); and (3) the legality of Oconee County unilaterally changing the easement burden on the Ratliff Family's properties, assuming Oconee County held a prescriptive easement, (R. p. 664, line 22-p. 666, line 25).

BOZA recognized that if Oconee County did not maintain the Private Driveway, then BOZA would not have the authority to grant the Variance Application. (R. p. 689, lines 15-22). After closing public comments, members of the BOZA noted: (1) the predicate question to considering the Variance Application is whether the BOZA has authority over the Private Driveway by virtue of a prescriptive easement, (R. p. 766, line 19-p. 767, line 14); (2) traffic and safety with the continuing operation of John's Marine needed to be resolved, (R. p. 768, lines 15-20, p. 771, lines 7-14; p. 772, lines 13-24; p. 773, lines 11-21; p. 774, lines 22-24); and (3) John's Marine uses the entirety of the Private Driveway to conduct its business, (R. p. 771, line 19-p. 772, line 11). Ultimately, BOZA voted to table the Variance Application pending a resolution of whether Oconee County holds a prescriptive easement over the Private Driveway. (R. p. 777, line 20-p. 778, line 15; p. 781, lines 6-11).

#### **January 24, 2022 BOZA Meeting**

On January 24, 2022, the Variance Application was again on the BOZA agenda. The application was removed from the table before discussion of ownership of the Private Driveway. (R. p. 798, line 25-p. 799, line 20). Oconee County Attorney David Root, Esq., informed BOZA that there was no question that the land under the Private Driveway belonged to private parties.

(R. p. 799, line 25-p. 800, line 2). According to Attorney Root, the question was whether Oconee County maintained the paved traveling surface of the Private Driveway such that it holds a prescriptive easement. (R. p. 800, lines 2-3; p. 802, lines 18-20). On this question, Attorney Root could offer no definitive answer in light of an affidavit he received—believed to have been provided by Jan Ratliff who has been an owner of 599 Ellenburg since 1981—that conflicted with information he had received from the roads and bridges department. (R. p. 800, lines 3-22).

Attorney Root informed BOZA that Oconee County, assuming it has a prescriptive easement over the Private Driveway, has no right to expand that easement (R. p. 802, lines 1-3). Attorney Root further informed BOZA that what Oconee County has done, or its level of maintenance on the Private Driveway over the previous twenty years, is what defines what Oconee County can do going forward. (R. p. 804, line 24-p. 805, line 6). BOZA postponed a vote on the Variance Application until a later time. (R. p. 814, line 24-p. 815, line 1).

#### **April 25, 2022 BOZA Meeting**

On April 25, 2022, the Variance Application was again on the BOZA agenda for a vote. Ridgewater and the developer, Lake Keowee Real Estate, were given another opportunity to present the variance request, and again asserted that Oconee County had a prescriptive easement over the Private Driveway. (R. p. 825, lines 15-17). The developer also asserted that the proposed roadway would give John's Marine *more room* to maneuver boats, such that it would not be detrimental to the adjacent property owners. (R. p. 827, line 20-p. 828, line 1). The Ratliff Family disputed this assertion. (R. p. 882, lines 9-23). During its presentation, the developer repeatedly asserted that the 50' right-of-way requirement did not exist at the time the owners purchased the property in 2008. (R. p. 824, lines 15-23; p. 826, lines 16-17; p. 829, lines 5-8). However, the Ratliff Family provided BOZA with ordinances reflecting that the 50' right-of-way requirement had been in place at least since 2006, before Globe and Farmes purchased the property. (R. p. 880,

line 10-p. 881, line 9, pp. 167-179). County staff, Mr. Reid, agreed that the 50' right-of-way requirement had been in place since 2006. (R. p. 902, lines 7-12).

After the developer's presentation, the BOZA asked county staff to present information on the existence of the prescriptive easement over the Private Driveway. As he had at the January 24, 2022 meeting, County Attorney Root addressed the BOZA, as did County Roads and Bridges employee Kyle Reid. The only additional information Mr. Root had gathered since the January 24, 2022 meeting was an affidavit from Lori Ellenburg Bright that further called into question Oconee County's asserted prescriptive easement along the Private Driveway. Mr. Root's and Mr. Reid's comments on the prescriptive easement were as follows:

MR. ROOT:

The -- I expressed the opinion on the Jan -- or during the January meeting, nothing has changed with that opinion which was to the effect that the county's corporate or institutional memory or knowledge is that it has a prescriptive easement to the edge of the pavement to the end of the pavement, abutting the -- the property that's to be developed. *I understand though at that time I had one affidavit from Jan Ratliff, I have another one now, I believe her name is Ms. -- yeah, Lori Ellenburg Bright, that calls that into question as -- as far as where that prescriptive easement ends, if it ends somewhere west of that. And that's all I have.* I -- I'm not a final arbiter or fact finder in that regard. I can't make a decision in -- just to make my role clear, I'm here to as best I can help with the integrity of the proceedings to make sure it goes smoothly. There's able counsel here for both sides and it would be, you know, just not right for me to advocate for any particular position. I'll answer any questions I can but as far as the facts on that prescriptive easement issue, that's what we have.

MR. CHAIRMAN:

So it's kind of unclear as to what --

MR. ROOT:

I -- I -- I would say --

MR. CHAIRMAN:

It's unclear.

MR. ROOT:

I wouldn't even use that moniker on it. I would say we've got the county maintains that it has the end of the pavement but I do understand that we have sworn statements provided by Mr. Ratliff's side we'll say that contradict that.

(R. p. 830, line 5-p. 831, line 13 (emphasis added)). Mr. Kyle Reid offered the following comments on his research into the issue of a prescriptive easement:

To our -- *to our institutional knowledge*, yes, sir, it -- it is a county road, all the way to the end as shown on -- on the plan.

...

And I can -- I can speak generally. Well, first, I've contacted the state and they don't have any record of Ellenburg Road that -- that shows that it was a state road. *Now all of the institutional knowledge again says that it was a state road.* As far as anything that where the state abandoned their maintenance responsibility and gave it to the county, again there is no record that shows that, the -- the state did not have any records as such and we don't have any records as such to that end. *So, it is institutional knowledge that has -- that has led us to that we own to that point of the road.*

(R. p. 835, lines 1-3, line 24-p. 836, line 10 (emphasis added)). The full extent of evidence Oconee County provided to the BOZA concerning whether Oconee County holds a prescriptive easement over the Private Driveway were verbal assertions of "institutional knowledge."

The BOZA again heard testimony from the Ratliff Family and their agents that the yellow centerline striping ends before the Private Driveway begins, the pavement quality changes at that point, the end of county maintenance sign had been located west of the Private Driveway for decades, and the Ratliffs have maintained the Private Driveway for forty years. (R. p. 844, lines 4-23). Appellant Jay Ratliff reiterated to the BOZA that the Ratliff Family had been using and maintaining the Private Driveway for forty years and provided pictures of John's Marine using the entirety of the Private Driveway to conduct its business. (R. p. 852, line 24-p. 853, line 20; p. 488).

Appellant Jay Ratliff is a licensed South Carolina professional engineer. (R. p. 851, lines 1-10). Mr. Ratliff prepared and provided the BOZA with scaled drawings based on Ridgewater's design. (R. p. 851, lines 3-5; pp. 487, 489-490; pp.146-148). These drawings called into question the measurements that form the basis for the Variance Application. Whereas Ridgewater and the developer claimed to own 31.9' of land available for the proposed roadway and only need an 18.1' variance, Mr. Ratliff explained that the Ridgewater's designs showed that it only owned 22.8' of land and in fact needed closer to a 27.2' variance. (R. p. 851, line 10-p. 852, line 23; Compare R. p. 478 (Variance Request Survey dated Aug. 26, 2021), with R. p. 477 (Site Plan dated Mar. 21, 2022)); see also site plans prepare by Ridgewater (R. pp. 205-206, 232-236, 477).

Mr. Ratliff's drawings depict a truck connected to a boat trailer for service, as they typically are at John's Marine, and based on the original design submitted by Ridgewater to the BOZA. (R. p. 489; p. 147). Under Ridgewater's original design, there is only 22.8' of land between the corner pin of the Ratliff Family's property and the 804 boundary, below which the developer cannot build. Mr. Ratliff explained that, prior to the Globe's and Farmes' backfill activities, which occurred on or about July 2021 (R. p. 682, lines 17-19), the original 804 boundary was only six feet from the end of the Ratliff Family property line. (R. pp. 147, 489). Even with the new backfill, under the original design provided by Ridgewater, the only way to achieve 31.9' to satisfy the Variance Application would be to fill-in an additional 9.1' of land owned by Duke on the lake side of the property below the 804 boundary. (R. p. 853, line 20-p. 854, line 19; R. pp. 147, 489).

Mr. Ratliff then pointed out that a second design was prepared by Goldie and Associates dated March 21, 2022, just before the April BOZA meeting. (R. pp. 477, 490; p. 148). Under this new design, the roadway shifted 9.1' onto the Ratliff Family's property to satisfy the 31.9' of land required for the proposed new public roadway without requiring fill below the 804 boundary. (R. p. 854, line 19-p. 855, line 13; pp. 148, 490). Such a shift would have a significant detrimental

impact on John's Marine by eliminating the area necessary to service boats, especially with the potential of 200 new cars a day driving past the business. (R. p. 855, lines 2-9, p. 856, lines 8-13, p. 858, lines 16-19; pp. 480-481).<sup>1</sup>

Prior to voting on the Variance Application, the BOZA observed that it was not competent to decide the prescriptive easement issue; however, it moved forward with a vote anyway based on its assumption that a prescriptive easement did in fact exist.

MR. CHAIRMAN:

Is anyone -- anyone not comfortable with that approach? Okay. Let's start out with the prescriptive easement. We've heard a lot of input on both sides, the county attorney, everyone else. What are your thoughts on the prescriptive easement?

MR. EAGAR:

I think -- I think from what we've heard so far that -- that does not bind us in any way in terms of whether, you know, and it -- from a decision standpoint we can go ahead with a decision that perceptively the easement doesn't impede us in any way from what I understood from Mr. Root, is that true?

MR. ROOT:

From my position, staying neutral, I believe you can craft an order that addresses the fact that the prescriptive easement may -- they may not express a direct opinion on the prescriptive easement but you address the variance of that pinch point, yes.

MR. EAGAR:

So I think that -- I think -- I think we should do that then and disregard the perceptively easement. This is a discussion?

MR. CHAIRMAN:

We are not competent to decide that issue.

MALE VOICE:

All right.

MR. CHAIRMAN:

We just don't -- we don't have the (inaudible).

MALE VOICE:

Right.

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<sup>1</sup> County staff provided a preliminary estimate that nineteen homes could possibly result in an additional 200 cars a day past the Ratliff Family's property. (R. p. 898, line 2-p. 899, line 1).

MR. CHAIRMAN:

We don't have business in that so we're not gonna decide that but as -- as John's suggesting we ought to go ahead and -- and decide this as though there were an easement and -- and if someone wants to go to court to --

MALE VOICE:

Yup.

MALE VOICE:

Yeah.

...

(R. p. 907, line 1-p. 908, line 17).

The BOZA recognized that if the county does not have a prescriptive easement, a new public road could not be built as Ridgewater requested.

MR. CHAIRMAN:

Well, I guess let's decide if there's no prescriptive easement there the county is not doing business down there and there isn't gonna be a road built, doesn't matter who's gonna, you know, it all depends on that getting decided somewhere.

(R. p. 912, lines 14-19).

Concerning the impact to adjacent property owners, the BOZA determined that John's Marine would have more room after the new public road was constructed and the previous prescriptive easement area was abandoned, as well as better access to its business. (R. p. 922, line 17-p. 923, line 15; p. 925, line 19-p. 926, line 3; p. 947, lines 17-21; p. 950, lines 14-19). The BOZA made this determination without addressing the Ratliff Family's drawings showing that an additional 9.1' of their land would be required for placement of the new public right of way. (See R. pp. 145-148). Even though BOZA recognized that it was approving a variance application for a new public road without knowing exactly where the location of the new public right-of-way would be located, it moved ahead with a vote. (R. p. 960, line 20-p. 963, line 14).

Ultimately, the Variance Application was approved. (R. p. 968, lines 1-3).

### **Appeal of BOZA Decision**

The Variance Order was issued and mailed on May 11, 2022. (R. p. 635). The Ratliff Family had thirty days to appeal the Variance Order pursuant to S.C. Code Ann. § 6-29-820(A), and they filed the notice of appeal in circuit court on June 8, 2022. (Notice of Appeal (Jun. 8, 2022); see also R. p. 97).

The circuit court held a hearing on this matter on August 16, 2022. Thereafter, the circuit court denied the Ratliff Family's appeal by order dated September 15, 2022. The Ratliff Family moved to alter or amend the order denying relief on September 23, 2022, and the court denied their motion on November 21, 2022. The Ratliff Family filed their notice of appeal on December 20, 2022.

### **STATEMENT OF THE FACTS**

Edward (John) Ratliff and Francis (Jan) Ratliff purchased 599 Ellenburg in 1981 and co-located their home on the property along with John's Marine Service, which was moved to the property from downtown Seneca in 1982. (R. p. 248). At the time the Ratliffs purchased 599 Ellenburg in 1981, T.B. Ellenburg owned the adjacent property located at 585 Ellenburg. Descendants of T.B. Ellenburg owned 585 Ellenburg until 2020 when it was sold to Appellants James Ratliff and Lucretia Morgan. (R. p. 679, lines 14-18).

At some point before or around the mid-1980's, Oconee County paved a portion of Ellenburg Road from Knox Road to approximately the western edge of 585 Ellenburg, at which location Oconee County installed an "End of County Maintenance" sign. (R. p. 684, line 21-p. 686, line 12; R. pp. 252, 255-258, 482, 484). Oconee County did not pave all the way to the dead end of Ellenburg Road. (R. p. 684, line 21-p. 686, line 12).

In the mid-1980's, T.B. Ellenburg and John Ratliff, as fee owners of the private driveway running in front of 585 & 599 Ellenburg, undertook the expense of paving their respective portions

of the Private Driveway and for forty years have maintained the road as private property. (R. p. 684, line 21-p. 686, line 12; R. pp. 159-160 ¶¶ 3-8 (Jan Ratliff Affidavit (Jan. 7, 2022))<sup>2</sup>; R. p. 482). The Private Driveway dead ends at John’s Marine and it is paved on the Ratliff Family’s property (585 Ellenburg Road and 599 Ellenburg Road) and the adjacent landowners’ property, with the majority on the Ratliff Family’s property.

At some point, Oconee County undertook to stripe the center line of the public section of Ellenburg Road, stopping where the Private Driveway begins and never reaching 585 Ellenburg or 599 Ellenburg. (R. pp. 137-144, 252, 255-258, 480, 483). Significantly, Oconee County did not present any records of public maintenance of the Private Driveway during any of the three BOZA hearings in this matter.

In 2009, Jan Ratliff, who has been an owner of 599 Ellenburg since 1981, along with her daughter-in-law, met with employees of the Oconee County Roads and Bridges Department. (R. p. 159 ¶ 2). These employees provided Ms. Ratliff with a plat indicating that Oconee County’s maintenance of Ellenburg Road ended at green highlighted marker at 565 Ellenburg Road. (R. p. 159 ¶¶ 3-4; R. p. 482). According to Jan Ratliff, the green marker was where the “End of County Maintenance” sign had been located for years before it was moved by an unknown person. (R. p. 159 ¶ 6).<sup>3</sup> Also according to Jan Ratliff, her family has continuously maintained the paved portion of Ellenburg Road to the east of the endpoint of county maintenance, and Oconee County has not engaged in any maintenance of the Private Driveway. (R. p. 160 ¶ 8).

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<sup>2</sup> While Ms. Ratliff’s affidavit does not appear to be included in the materials before the BOZA, County Attorney Root referenced it several times in relation to the existence of a prescriptive easement. (R. p. 800, lines 12-14; R. p. 830, lines 5-17). Accordingly, Appellants presented it to circuit court and include it here as part of the Record on Appeal.

<sup>3</sup> The sign was moved by an unknown person and temporarily placed at the end of Ellenburg Road; however, it is no longer there. (R. p. 663, lines 12-21; p. 733, lines 14-17; R. p. 845, lines 11-18).

Laurie Ellenburg Bright is the granddaughter of T.B. Ellenburg who sold part of his farmland for the creation of Lake Keowee. (R. p. 484). Ms. Bright grew up and resided at 591 Ellenburg Road for forty years. (R. p. 484). According to Ms. Bright's affidavit, after the creation of Lake Keowee, an "End of County Maintenance" sign was stationed between 575 Ellenburg and 585 Ellenburg Road. (R. p. 484 ¶ 6). Ms. Bright drove past this sign for years, and particularly recalled the location of the sign because it was located next to a bathtub that her grandfather used to water his cattle. (R. p. 484 ¶ 6). This information was provided to the BOZA.

No documents or testimony were provided to the BOZA contradicting the affidavits from Jan Ratliff and Laurie Ellenburg Bright.

John's Marine uses the entirety of the Private Driveway to conduct its business and has done so for forty years. (R. p. 852, lines 8-13; R. pp. 248-249, 480-481).

#### **STANDARD OF REVIEW**

On appeal, "[t]he findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." S.C. Code Ann. § 6-29-840(A). "A jury's factual findings will not be disturbed on appeal unless the record contains no evidence reasonably supporting the jury's findings." *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 182, 813 S.E.2d 874, 880 (Ct. App. 2018) (citing *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 35, 606 S.E.2d 209, 212 (Ct. App. 2004)).

"In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." S.C. Code Ann. § 6-29-840(A). "However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." *Boehm*, 423 S.C. at 182, 813 S.E.2d at 880-81 (citations omitted). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *Id.* (citations

omitted). A zoning board’s decision will be overturned based on errors of law or “where there is no legal evidence to support it.” *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 754-55 (1953). Such errors occurred here.

## **ARGUMENT**

### **I. The BOZA Did Not Have Jurisdiction to Decide a Legal and Factual Dispute Over the Existence of a Prescriptive Easement.**

The BOZA did not have jurisdiction to decide a factual and legal dispute over whether Oconee County has a prescriptive easement over the Ratliff Family’s Private Driveway. In hearing evidence on the prescriptive easement, assuming the existence of a prescriptive easement, and then approving the Variance Application based on this assumption, the BOZA effectively determined this disputed legal and factual question. In this manner, BOZA acted outside of its limited statutory jurisdiction to hear variance applications. The lower court did not address this jurisdictional issue in its order denying relief. (R. pp. 3-12). This was error.

The BOZA is a body of limited jurisdiction. S.C. Code Ann. § 6-29-800 (setting forth the powers of a board of zoning appeals). Concerning variances, a board of zoning appeals’ jurisdiction is limited to the following:

- (2) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:
  - (a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;
  - (b) these conditions do not generally apply to other property in the vicinity;
  - (c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

(d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

S.C. Code Ann. § 6-29-800(A)(2). The BOZA does not have jurisdiction to hear and decide factual and legal disputes falling outside of these limited findings.

Pursuant to Oconee County road ordinances, Ridgewater's proposed roadway to service a future nineteen-home subdivision requires the construction of either a *private road* or a *public road*.<sup>4</sup> Both a *private road* and a *public road* require direct access to the public road system. R. p. 164 (Ord. Sec. 26-2(c), (c)(1)); p. 165 (Sect. 26-3(a)). Here, Ridgewater sought a variance for the construction of a public road. Because Ridgewater's proposed road plans depict its connection to the public road system through the Private Driveway, the character of the Private Driveway at the point of intersection is a determining factor of the type of road the developer can construct. As such, the character (public or private) of the Private Driveway needed to be settled prior to a determination on the Variance Application. If the Private Driveway is not a public road, then the Variance Application for a new public road would have to be denied and Ridgewater and the developer would have to revise their roadway plans and work directly with the Ratliff Family to obtain the appropriate rights for the construction of a new roadway to tie into the Ratliff Family's private property.

There is no dispute that Oconee County does not own the land underlying the roadbed. (R. p. 799, line 25-p. 800, line 2). The question before the BOZA was whether Oconee County held a prescriptive easement over Ellenburg Road at the location of the Private Driveway such that it would qualify as a public road that could be extended to the new nineteen-home subdivision.

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<sup>4</sup> *Private roads* serve a minimum of eleven lots, require a minimum 50' right-of-way, and require that "the development served by a private road shall have direct access into a public road." R. p. 164 (Oconee County Ord. Sec. 26-2(c), (c)(1)). *Public roads* require the continuation of an adjoining public road system. R. p. 165 (Ord. Sect. 26-3(a)).

The Ratliff Family strongly disputed the existence of a prescriptive easement and informed the BOZA that Oconee County had never performed maintenance of any kind over the Private Driveway. The Ratliff Family presented documents and testimony that they and their predecessors had paved and maintained the Private Driveway for the last forty years. Oconee County presented no evidence of maintenance of the Private Driveway at any point in time, it merely asserted “institutional memory” that such an easement exists. (R. p. 835, lines 1-3, 24-p. 836, line 10).

During public comments, the Ratliff Family informed the BOZA that they disputed that Oconee County holds a prescriptive easement over their Private Driveway. (R. p. 660, line 22-p. 661, lines 5; p. 663, line 9-p. 664, line 22). The Ratliff Family brought to the BOZA’s attention the fact that: (1) they and their family members, or predecessors in interest, had paved and maintained the Private Driveway for the last forty years, (R. p. 678, line 25-p. 680, line 3; p. 684, line 21-p. 685, line 11); and (2) Ellenburg Road itself reflects the difference between County and non-County maintained travel surfaces where the pavement quality differs and where the County stopped its yellow-line road striping at the location where the Private Driveway begins, (R. p. 663, line 9-p. 664, line 5; p. 679, lines 4-9; *see also* R. pp. 138-144, 252-258 (images of the road striping)).

Prior to voting to approve the Variance Application, the BOZA recognized that this disputed issue of whether Oconee County held a prescriptive easement across the Private Driveway had to be determined. (R. p. 766, line 19-p. 767, line 14 (“That’s our first question, do we have authority?”)). This was the reason the BOZA did not vote when the application first came before it on November 30, 2021, (R. p. 781, lines 6-11), and the reason the application was not determined at the January 24, 2022 meeting, (R. p. 800, lines 2-24, p. 810, lines 10-12).

Had the prescriptive easement and character of the Private Driveway not been in dispute, the BOZA could have moved forward on the Variance Application without jurisdictional

questions. However, once it became clear that the character (public or private) of the Private Driveway was disputed, the BOZA did not have the jurisdiction to resolve the prescriptive easement issue or the jurisdiction to move forward on the Variance Application under an assumption that effectively resolved the factual dispute over the prescriptive easement, which is what happened here.<sup>5</sup>

The BOZA recognized that: (1) a determination of the existence of a prescriptive easement was a predicate to its determination on the Variance Application, (R. p. 689, lines 15-22, p. 766, line 19-p. 767, line 14), which is why it initially deferred consideration of the application until this issue was resolved, (R. p. 777, line 20-p. 778, line 15, p. 781, lines 6-11); and (2) it did not have the jurisdiction to determine the existence of the prescriptive easement, (R. p. 907, line 1-p. 908, line 13 (“we are not competent to decide that issue”; “we ought to go ahead and . . . decide this as though there were an easement”). Ultimately, however, without waiting for a legal determination on this issue from a court of competent jurisdiction, the BOZA simply assumed the existence of a prescriptive easement. (R. p. 908, lines 8-13 (Chairman indicating they would go ahead and decide the application as though there were an easement)). Based on this assumed prescriptive easement, the BOZA determined that it could grant the Variance Application for a future public road that will tie into this existing prescriptive easement. In assuming the existence of the prescriptive easement, the BOZA resolved this factual and legal dispute in favor of Oconee County and the developer, and effectively did the very thing it recognized that it did not have the power to do. This was error.

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<sup>5</sup> The variance applicant has the burden of proving that the prerequisites for its application are satisfied. When the BOZA assumed the existence of the prescriptive easement without requiring Ridgewater or Oconee County to have this disputed question first resolved by a court of competent jurisdiction, it shifted the burden onto the Ratliff Family to object to the variance, pursue this appeal, and to pursue court action to determine whether Oconee County has a prescriptive easement. This places a substantial and unfair burden on an impacted property owner.

Not only did the BOZA decide the existence of the prescriptive easement, it then approved modified boundaries of the easement, ordered certain sections of the easement to be abandoned, and modified the burden of the easement on the Ratliff Family's property. (R. p. 636 (Corrected Order Approving Variance)). The BOZA did not have the jurisdiction to make these determinations. This was an abuse of discretion and legal error. Accordingly, the Variance Order should be reversed.

## **II. BOZA Abused its Discretion When it Assumed that Oconee County Has a Prescriptive Easement Over the Ratliff Family's Private Driveway.**

The BOZA abused its discretion when it assumed that Oconee County holds a prescriptive easement over the Private Driveway. The BOZA did not have jurisdiction to decide the factual dispute over the prescriptive easement. (*See* Argument I, *supra*). However, even assuming the BOZA could make an assumption on the existence of a prescriptive easement in order to move forward on the Variance Application, the BOZA abused its discretion in light of the evidence before it when it arbitrarily determined that Oconee County held a prescriptive easement over the Private Driveway. The BOZA failed to evaluate each required legal element of a prescriptive easement and did not explain how Oconee County met its burden of proving the existence of a prescriptive easement by clear and convincing evidence.

“An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.” *Boehm*, 423 S.C. at 182, 813 S.E.2d at 880-81 (quoting *Newton v. Zoning Bd. of Appeals for Beaufort Cty.*, 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011)). Here, the BOZA's decision finding the existence of a prescriptive easement is unsupported by the evidence. Additionally, the BOZA's failure to review each element of a prescriptive easement and place the correct legal burden on Oconee County to prove the existence of a prescriptive easement by clear and convincing evidence were an errors of law.

A prescriptive easement must satisfy all of the following elements:

- i. Continued and uninterrupted use or enjoyment of the right for a period of twenty years;
- ii. The identity of the thing enjoyed; and
- iii. Use or enjoyment which is either adverse or under claim or right.

*Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169-70 (2015). A prescriptive easement must be proven by clear and convincing evidence, *Bundy*, 412 S.C. at 306, 772 S.E.2d at 170-71, its existence cannot merely be assumed to exist. The proponent of the easement carries the burden of proof. *Id.* at 306, 772 S.E.2d at 170.

Oconee County admitted during the BOZA hearings that it did not own the fee to the Private Driveway and if it had any rights at all over the Private Driveway they were by prescriptive easement. (R. p. 799, line 15-p. 800, line 22). However, Oconee County did not present any evidence to BOZA of its continued uninterrupted use of the Private Driveway for twenty years, it did not produce *any* maintenance records reflecting work done on the Private Driveway at *any* point in time, and it did not present any testimony from county employees, or anyone else, who had personal knowledge of performing maintenance work on the Private Driveway. The only “evidence” cited by Oconee County for asserting the existence of a prescriptive easement over the Private Driveway was “institutional memory.” (R. p. 830, line 5-p. 831, line 13; p. 835, lines 1-3, 24-p. 836, line 10). Institutional memory is not evidence. The BOZA had no documentary or testimonial evidence before it showing Oconee County’s continued and uninterrupted maintenance or use of the Private Driveway for twenty years.

Conversely, the Ratliff Family presented evidence to the BOZA including (1) two affidavits stating that Oconee County placed an End of Maintenance sign at or around 585 Ellenburg Road where it stayed for decades, (R. pp. 159-160, 484); (2) documents and public statements that the Ratliff Family have maintained the Private Driveway for the last forty years,

(R. pp. 159-160, 480; p. 852, lines 8-13); and, (3) photographs depicting the end of Oconee County's centerline yellow striping before the Private Driveway began, (R. pp. 138-144, 255, 258, 483).

Despite this imbalance of evidence, the BOZA simply assumed the existence of a prescriptive easement. (R. p. 908, lines 8-13 (Chairman indicating they would go ahead and decide the application as though there were an easement)). BOZA did not require Oconee County to prove that it had continually performed maintenance over the Private Driveway thus giving rise to a prescriptive easement. Further, the BOZA certainly did not require Oconee County to prove this fact by clear and convincing evidence. Even under a preponderance of the evidence standard, the evidence presented to the BOZA weighed in the Ratliff Family's favor showing that such an easement did not exist. Under a clear and convincing evidence standard, it is even more clear that Oconee County did not provide sufficient evidence to justify BOZA's assumption that a prescriptive easement existed over the Private Driveway.

The circuit court did not address this basis of the Ratliff Family's appeal. (R. pp. 3-12). Instead, the lower court cited to public comments from Jay Ratliff about his childhood memory about his parent's address and the location of roads before the lake existed. (R. pp. 5-6). However, the transcript at this point is unclear. Mr. Ratliff is asked about a picture that is not specifically referenced and he is referencing a document that cannot be readily identified from the transcript, making his testimony unclear on this issue. (R. p. 683, line 18-p. 684, line 25). The court also cited two plats in the record. (R. p. 7). The first plat was prepared for Appellants James Ratliff and Lucretia Morgan. (R. p. 475). As explained by counsel for the Ratliff Family during the hearing, James Ratliff and Lucretia Morgan questioned the placement of this right-of-way indication on their plat and were told by the surveyor that Oconee County was requiring this notation. (R. p. 1003, lines 6-13). The surveyor has no independent support for this notation. *Id.*

This was certainly a disputed fact by the Ratliff Family. The second plat cited by the court is a plat from 1974. (R. p. 7). This plat does not show Ellenburg Road or an Oconee County easement along the road. (R. p. 486). This plat did not support BOZA's or Respondents' position and is not a reason to deny the Ratliff Family's appeal. The lower court did not explain how BOZA made findings on each element of a prescriptive easement or how based on the evidence before it, BOZA could have concluded based on clear and convincing evidence that Oconee County has a prescriptive easement along the Private Driveway.

When fairly viewing the evidence presented, any assumption that the BOZA could make on the prescriptive easement question should have been in the Ratliff Family's favor, leading to the conclusion that the Private Driveway is not a public road. Once this assumption is corrected, the entire basis for approving the Variance Application fails. Without a public road to tie directly into, Ridgewater cannot construct a new public road.

Given the evidence before it, the BOZA's assumption that Oconee County held a prescriptive easement over the Private Driveway was arbitrary, capricious, and an abuse of discretion. Accordingly, the Variance Order should be reversed.

### **III. BOZA Erred in Unilaterally Expanding the Easement Burden on the Ratliff Family's Properties.**

Assuming that Oconee County has a prescriptive easement over the Private Driveway, which the Ratliff Family expressly denies, the BOZA's grant of the Variance Application will result in a material increase in the burden on the Ratliff Family's property and impose new and additional burdens. The owner of an easement cannot materially increase the burden on the servient estate nor impose new or additional burdens. *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012). Oconee County's attorney informed the BOZA of this legal principle. (R. p. 802, lines 1-3). The lower court did not address this issue in its order denying relief. (R. pp. 3-12). It

was error for the BOZA to unilaterally approve a variance request that will materially increase and change the burden on the Ratliff Family's property.

As this Court has previously observed, "The owner of the easement cannot materially increase the burden of the servient estate or impose thereon a new or additional burden." *Rhett*, 401 S.C. at 493, 736 S.E.2d at 881 (quoting *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973) (internal quotation marks omitted)). "Enlarging an easement to include adjoining tracts increases the burden." *Id.* at 495, 736 S.E.2d at 882.

A fundamental principle is that an easement for the benefit of a particular piece of land cannot be enlarged and extended to other parcels of land, whether adjoining or distinct tracts, to which the right is not attached. In other words, an easement appurtenant to a dominant tenement can be used only for the purposes of that tenement; it is not a personal right, and cannot be used, even by the dominant owner, for any purpose unconnected with the enjoyment of his estate. The purpose of this rule is to prevent an increase of the burden upon the servient estate, and it applies whether the easement is created by grant, reservation, prescription, or implication.

*Id.* at 495-96, 736 S.E.2d at 882 (citation and internal quotation marks omitted).

Assuming the existence of a prescriptive easement, the only pre-existing burden on the Private Driveway would have been occasional county maintenance—though Oconee County presented no documents of any prior maintenance. Granting a variance for a private development of nineteen homes with an estimated 200 trips per day driving along the Ratliff Family's property will result in a material increase in the burden of vehicular traffic. The only current users of the dead-end Private Driveway are the Ratliff Family, their visitors, and patrons of John's Marine. Installation of a public road servicing a brand-new subdivision will materially change the character of the Private Driveway and increase the burden of vehicular traffic on the Ratliff Family's properties.

Transforming the Private Driveway into a public road also places new burdens on the Ratliff Family's properties. John's Marine has been operating at its current location for forty years.

The Ratliff Family testified that John's Marine will no longer be able to operate on the property should the Private Driveway be transformed into a public road for nineteen new homes. (R. p. 852, line 8-p. 856, line 9; R. p. 481). John's Marine uses the entirety of the Private Driveway to conduct its business. If the Private Driveway is no longer available to John's Marine, this is a new and substantial burden that has never been placed on the Ratliff Family's land and a restriction the Ratliff Family never assented to. (*Id.*)

It was arbitrary, capricious, and an abuse of discretion for BOZA to approve the Variance Application that will materially increase the existing easement burden and create new burdens on the Ratliff Family's land. The owner of an easement cannot materially increase the burden on the servient estate nor impose new or additional burdens. *Rhett*, 401 S.C. 478, 736 S.E.2d 873. Yet, this exactly what the BOZA decision did. This was an error of law and the Variance Order should be reversed.

#### **IV. BOZA's Approval of the Variance Application was Arbitrary and Capricious Because the Location of the Roadway Was Left Undetermined.**

At the time it approved the Variance Application, BOZA recognized that the final location of the roadway was uncertain. (R. p. 960, line 20-p. 963, line 14). BOZA failed to explain in writing why the indeterminant nature of the proposed roadway would not be a substantial detriment to the Ratliff Family—one of the required findings in approving a variance, S.C. Code Ann. § 6-29-800(A)(2)(d). At all points where the proposed new public road is adjacent to the Ratliff Family's property, the 50' right-of-way requirement cannot be met unless the Ratliff Family's Private Driveway is included in the public right-of-way calculation. (R. pp. 608-610; pp. 150-157). The Ratliff Family explained to the BOZA, that if their property was required for the new roadway, it would be of substantial detriment to John's Marine. The BOZA did not address this concern and the lower court did not address this issue in its order denying relief. (R. pp. 3-12).

The Ratliff Family submitted scale drawings showing that in order for Ridgewater to meet the 31.9' right-of-way to construct the new public road, Ridgewater will either have to fill in a substantial amount of land currently underwater as part of Lake Keowee and belonging to Duke Energy, or the roadway will have to shift toward John's Marine and be placed on top of the location where John's Marine currently maneuvers boats and trailers. (R. pp. 147-148, 489-490). Ridgewater's own revised drawings prepared in March 2022 before the April 2022 BOZA hearing showed that it needed to shift the proposed roadway 9.1' onto the Ratliff Family's property to build the new public road. (R. p. 477; p. 150).

At the April 2022 BOZA Hearing, the Ratliff Family testified that the substantial increase in traffic (200 cars a day) will detrimentally impact its business, even without this 9.1' shift in the proposed roadway onto their property. (R. p. 852, line 8-p. 856, line 9; p. 481). If the road must shift, as reflected in the Ridgewater's revised drawings, such that John's Marine's boat service area will now become a public roadway for 200 cars a day, the Ratliff Family testified that this change will have an even more detrimental impact on their business. (*Id.*).

In reviewing a variance application, the BOZA is charged with determining whether the requested variance will "be of substantial detriment to adjacent property," and is required to set forth its findings in writing. S.C. Code Ann. § 6-29-800(A)(2) ("A variance may be granted . . . if the board *makes and explains in writing*" the four requirements); Oconee County Code Sec. 38-7.1 ("The board of zoning appeals may grant a variance . . . if the board of zoning appeals makes and explains in writing" the four requirements). "The developer shall have the burden of providing evidence to the county of compliance with . . . the specific requirements of this applicable section." Oconee County Code Sec. 38-7.1. Only where the BOZA determines the variance *will not* be of substantial detriment can a variance be granted.

In this instance, the BOZA approved the variance application without sufficient definiteness as to the final location of the proposed public roadway and BOZA did not require the developer to provide it with this information for its review. As demonstrated by the Ratliff Family, the detrimental impact analysis changes as the placement of the final roadway shifts. The BOZA did not conduct sufficient analysis of the detrimental impact on the Ratliff Family's property under the various scenarios of the final road placement and did not sufficiently review the impact of utility placement, road construction, and home construction.

BOZA's Variance Order, (R. p. 636), does not contain written explanatory findings as to element four, "detriment to adjacent uses," specifically as to how the variance is not detrimental to John's Marine considering the drawings provided by the Ratliff Family showing that in order for Ridgewater to meet the 31.9' minimum right-of-way, Ridgewater would have to encroach on the Ratliff Family's property. (R. pp. 147-148, 489-490). The BOZA hearing transcripts also do not contain an analysis of the detrimental impact to John's Marine under the varying road location scenarios.

The Ratliff Family presented BOZA with drawings indicating that under certain scenarios, property from the Ratliff Family would need to be taken to meet the 31.9' right-of-way, and under this scenario the Ratliff Family would lose land rather than gain any land, (R. pp. 147-148, 489-490), which directly contradicted one of the primary assumptions underlying the BOZA's vote approving the variance where it concluded John's Marine would gain land rather than lose land, (R. p. 922, line 17-p. 923, line 15; p. 925, line 19-p. 926, line 3; p. 947, lines 17-21; p. 950, lines 14-19). However, the BOZA had no discussion about this issue. (R. pp. 851-858 (no questions from BOZA on shifting road location diagrams provided by the Ratliff Family) (Apr. 25, 2022)).

The BOZA's finding of no substantial detriment to the Ratliff Family's property and its decision to approve the variance application without sufficient definiteness as to the final location

of the roadway was arbitrary, capricious, and an abuse of discretion. Because the Variance Order was not accompanied by written explanatory findings and the transcript is devoid of sufficient analysis on these points, it failed to meet the statutory requirements and must be voided. As such, the Variance Order should be reversed.

## **CONCLUSION**

The BOZA recognized that a determination of whether Oconee County holds a prescriptive easement over the Private Driveway was a predicate issue to its vote on the Variance Application. If Oconee County did not hold a prescriptive easement over the Private Driveway, then Ridgewater's proposed public road would not abut the public road system and it would not qualify to become a new public road. Rather than waiting for a court of competent jurisdiction to decide this predicate issue, the BOZA effectively decided this disputed legal and factual question by assuming that Oconee County held a prescriptive easement. In making this assumption, the BOZA exceeded its limited jurisdiction to decide variance applications.

Even assuming that the BOZA could weigh the evidence before it and make its own assumption on the existence of a prescriptive easement, its assumption that Oconee County has an easement over the Private Driveway was not supported by the evidence and was arbitrary and an abuse of discretion. Taking the testimony and documents together, the only evidence Oconee County relied upon in stating its claim to a prescriptive easement over the Private Driveway was "institutional memory," which is no evidence at all. On the other hand, the Ratliff Family provided testimony, documents, and sworn statements showing that they had maintained the Private Driveway for the past forty years. The BOZA abused its discretion when it determined from the evidence before it that it should assume the existence of a prescriptive easement.

From its faulty assumption that a prescriptive easement exists, BOZA then proceeded to approve the Variance Application that not only unilaterally changed the location and dimensions of the assumed public right-of-way on the Ratliff Family's property, but also materially increased the burden on the Ratliff Family's land. Even assuming the existence of a prescriptive easement for the sake of argument, the burden of such an existing easement would be minimal and consist of periodic road maintenance by Oconee County. In approving the Variance Application, the BOZA granted Ridgewater the ability to construct a public road sending potentially 200 cars a day across the Ratliff Family's property, interfering with its ability to conduct its business. This is a unilateral material change in the easement burden on the Ratliff Family, something that Oconee County appeared to recognize that it could not do but did anyway.

Finally, the BOZA approved the Variance Application without knowing where the proposed roadway would be located and whether the roadway would actually take land from the Ratliff Family rather than give them land. When BOZA evaluated the impact to John's Marine from the variance, it concluded that the Ratliff Family would gain land as part of the project. BOZA ignored drawings from the Ratliff Family demonstrating that unless the Ridgewater or the developer were planning to fill in land below the 804 boundary belonging to Duke, in order to meet its 31.9' minimum right-of-way Ridgewater must place the roadway on the Ratliff Family's property. BOZA did not explain why it chose to disregard the Ratliff Family's drawings or how it reconciled this information with Ridgewater's claim that the Ratliff Family would gain land as part of the project. This was arbitrary, capricious, and an abuse of discretion.

For these reasons, the Ratliff Family requests that the Variance Order be reversed.

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**Jun 06 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM OCONEE COUNTY  
Court of Common Pleas  
The Honorable J. Cordell Maddox, Jr.

Case No. 2022-CP-37-00396  
Appellate Case No. 2022-001796

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John's Marine Service, Inc., Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff,  
Lucretia B. Morgan, Sherri Akers Crisp and Amy Cawthon,

Appellants,

v.

Oconee County Board of Zoning Appeals, Ridgewater Engineering & Surveying, LLC, Globe, a  
South Carolina Limited Partnership, and Farnes, a South Carolina Limited Partnership,

Respondents.

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CERTIFICATE OF COUNSEL

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The undersigned certifies that the Final Brief of Appellant complies with Rule 211 (b),  
SCARCR and the Supreme Court's April 15, 2014 Order regarding personal identifiers.

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