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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

Case No. 2022-CP-37-00396
Appellate Case No. 2025-000946

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 Farmes, a South Carolina Limited Partnership,

Respondents.

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INTRODUCTION

Appellants own land situated at 585 Ellenburg Road and 599 Ellenburg Road in Seneca, South Carolina. Appellants contend that they own a paved "Private Driveway" running along the southern end of these properties that dead ends at the eastern end of 599 Ellenburg Road and the same paved area is also partially located on the property of Globe and Farmes. The Appellants contend that this paved section connects Appellants' properties to the public road system known as Ellenburg Road. Appellants contend that they and their predecessors in title paved the road in the mid-1980's and for forty years have maintained it as private property. These contentions are unsupported by any evidence. The "Private Driveway" is the only means of the Respondents, Globe and Farmes, to access their property without a boat and the same also serves the public and patrons of John's Marine Service, Inc. ("John's Marine"), which has been located on 599 Ellenburg Road since 1982 and is operated by James L. Ratliff, one of the Appellants herein. There are no known express easements of record over the paved section that divides the Plaintiff and Defendant Globe and Farmes real property. Oconee County contends that they have maintained the entirety of Ellenburg Road and that the same is a public road in its entirety. On April 25, 2022, the Oconee County Board of Zoning Appeals (the "BOZA") granted a road variance application with regards to Globe and Farmes' property. Appellants appealed this decision to the Circuit Court where the BOZA was affirmed by Judge Cordell Maddox. The findings by Judge Maddox contained in pertinent part that "Further, the absence of any evidence that an abandonment procedure was ever brought to terminate the public right-of-way for Ellenburg Road requires a determination that, as a matter of law, Ellenburg Road remains an Oconee County maintained road."

QUESTIONS PRESENTED

1. Under S.C. Code § 6-29-800, can a zoning variance be granted on the ground of "unnecessary hardship" when the applicant purchased the property subject to the very governmental restrictions of which he complains?

2. Under S.C. Code § 6-29-800, can a developer obtain a variance solely to increase his profits by increasing the density of its development, contrary to an existing county ordinance?

3. Under S.C. Code § 6-29-800, can a board of zoning appeals shift the burden of proof from a developer/applicant onto neighboring landowners?

4. Under S.C. Code § 6-29-800, can a county board of zoning appeals approve a variance to a county ordinance based on assumptions instead of evidence?

5. Under S.C. Code § 6-29-800, is a board of zoning appeals required to make written explanatory findings in its order instead of simply restating the statute?

STATEMENT OF THE CASE

This is an appeal from an Oconee County Board of Zoning Appeals' ("BOZA") grant of a road right-of-way variance due to the unique geographical conditions of the real estate at issue because Globe and Farmes do not have the ability to comply with the County's requirement of a fifty (50') foot right of way. The BOZA ultimately granted Road Variance Application #VA-21-011 (hereinafter "the variance application") of 18.1' from the 50' right-of-way from the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way and the decision of BOZA was clearly supported by the evidence presented to it.

Respondents would show that the BOZA decision was based upon evidence and testimony gathered over the course of three public hearings held November 30, 2021, January 24, 2022, and April 25, 2022. Each of the hearings pertained to the variance application which was granted by BOZA. By Order dated September 15, 2022, the Circuit Court found that the Decision of BOZA was not arbitrary and capricious, that the facts and decisions have a reasonable relation to a lawful purpose and that BOZA did not abuse its discretion as the decision of BOZA is clearly supported by the evidence presented to it. Similarly, the Court of Appeals heard this matter on November 6, 2024 and issued its Opinion on February 19, 2025 and affirmed the findings below. The Supreme Court should not grant certiorari to the Appellants.

Factual Background

Respondents Globe and Farmes are seeking to develop Arrowhead Point into a nineteen-home subdivision, which pursuant to Oconee County ordinances requires a 50-foot right-of-way. Because the existing roadway is only 31.9' at its narrowest section, Respondents requested an 18.1' variance. The BOZA held three hearings on Respondents' variance application because of the Appellant's opposition to the Respondent's planned development. 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. These meetings provided ample time for the BOZA to consider the parties position, obtain information related to the issues before it, and fully consider the granting of a variance. The BOZA specifically acknowledged that it did not have jurisdiction to determine the existence of an easement and that its finding was limited to the application of the statutory factors as to the Respondent's variance application. The BOZA ultimately and unanimously granted the variance request. As acknowledged by the Appellant's attorney during the oral arguments at the Court of Appeals, if this road is a county road, no prescriptive easement would be necessary. Further, despite Appellant's contention and as shown by Judge McDonald's questioning at oral arguments, the BOZA never made a finding that the County had a prescriptive easement. Judge McDonald was further correct at oral arguments that Appellants have taken inconsistent positions including, but not limited to, Mr. Jay Ratliff telling the BOZA that Ellenburg Road was at one time a state road known at Route 1. The issues raised by the Appellants are red herrings, as pointed out by Judge McDonald, and are rooted in Appellant's objection to Respondent's development.

ARGUMENT

As an initial matter, Appellants are not entitled to a Writ of Certiorari and there is no basis under Rule 242, SCACR for the granting of the same. There are no novel questions of law raised in this matter. There is no dissent in the decision of the Court of Appeals. The decision of the Court of Appeals is not in conflict with a prior decision of the Supreme Court. There are no constitutional issues involved in this matter nor are there any federal questions or conflict with any decision of the United States Supreme Court. Notably, Appellants have forgone the primary argument raised below that the BOZA granted a prescriptive easement outside of its statutory authority.

I. Appellants Have Never Raised the Issue of Unnecessary Hardship Based on Pre-Existing Conditions Previously.

While this Court has previously held that conditions existing at the time of purchase cannot form the basis of an unnecessary hardship to justify a variance request this is not an issue raised in Appellant's appeal from the BOZA, it is not found within any of the Appellant's briefs to the Court of Appeals, nor was it raised at oral argument of this matter. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997).

Appellant makes no mention of this argument in his appeal pleadings to the circuit court and they are additionally absent from his initial and final brief to the Court of Appeals. The inclusion of this argument is the only potential pretense that could lead to the granting of a writ; however, it was never raised below. Any error by the Respondents Globe and Farmes as to the existence and adoption of the road standard ordinances is harmless and immaterial to the variance

being considered given the unique geographical nature of the real estate at issue. Additionally, Appellants make clear that they, along with representatives of the County, informed the BOZA that the 50' right-of-way requirement had been in place at least since 2006 prior to the BOZA issuing a ruling.

II. The Appellants Have Never Raised The Issue Of The BOZA' Impermissible Considerations of Profit Maximization.

Although the BOZA did not grant the Respondent's variance for financial reasons, this issue was never raised below. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997).

The Court of Appeals' decision correctly explains that, as a matter of law, the BOZA may not consider the fact that Arrowhead Point could be developed and utilized more profitably as a basis to approve the variance. (Order at 6, n.4 (quoting S.C. Code. Ann. § 6-29-800(A)(2)(d)(i))). The Court of Appeals goes on to correctly state that "The only way the developers could avoid the 50-foot right-of-way width requirement would be to reduce the number of proposed homes on the property to three lots. Compare Oconee County, S.C., Code of Ordinances § 26-2(a) (providing no design standards apply to private driveways, which "shall serve no more than three residential dwellings") with § 26-2(b) (requiring private drives serving no more than ten lots or dwellings must "[h]ave a minimum road right-of-way of 50 feet, or an appropriately executed private roadway easement as defined by these regulations"). Thus, evidence supports the BOZA's conclusion that reducing the number of lots to three would unreasonably restrict the utilization of this fifteen-acre property." (Order at 10). It is clear to the Court of Appeals and the BOZA that

profit maximization was not the sole basis for BOZA's finding of unnecessary hardship and approving the variance. Appellants completely misrepresent the record of the BOZA in implying that the record, specifically R. pp. 942-45, imply any profit considerations. There are no such conversations of the BOZA in those pages.

The BOZA and the Court of Appeals did not consider the fact that Arrowhead Point could be developed more profitably with the variance because it would permit an increase in density from three lots to nineteen but rather that restricting a fifteen-acre parcel to only three homes as an unreasonable restraint on the use of the land. Additionally, this restriction would not be in keeping with the character of the surrounding neighborhood in which most properties are roughly an acre in size residential lots.

III. The BOZA Did Not Abuse Its Discretion When It Shifted the Burden of Proof Away from the Variance Applicant and Onto the Adjacent Landowners.

The Court of Appeals correctly dismissed Appellants' burden shifting argument. The Court of Appeals questioned why the Appellants, who wanted a determination that their section of road was a "Private Driveway" would not be the proper party to seek an adjudication of the same. While Appellants argue that the BOZA abused its discretion when it shifted the burden of proof to prove the existence of a public road away from the developer/variance applicant and onto the adjacent landowners this is not in keeping with a rational argument of the necessary procedure. Respondents have never claimed anything except that the road in its entirety was a public road. Appellants are the sole group that has sought a ruling on the private nature of the road despite testifying to the BOZA that Ellenburg Road was once a state road and as such, the burden was never shifted on to the Appellants. As correctly pointed out by Judge McDonald, the BOZA never made a finding that the County had a prescriptive easement despite the Appellant's contention otherwise. Judge

McDonald pointedly questioned Appellant's Counsel at oral arguments about where the specific finding of a prescriptive easement existed within the record and Appellant's counsel was unable to point to a finding by the BOZA of a prescriptive easement. The BOZA never shifted the burden onto the Appellants as the burden was always on the Appellants if they wanted to prove that a road that has been identified in recorded documents from at least 1946 as a public road was in fact private.

IV. The BOZA Did Not Make a Finding On the Public or Private Nature Of The Road.

The BOZA recognized that it did not have jurisdiction to decide whether Oconee County has a prescriptive easement over the Disputed Section of Road. The BOZA did not determine whether a prescriptive easement existed. There is no finding in the record that supports the Appellant's position that the BOZA acted outside of its limited statutory jurisdiction to hear and decide variance applications because the BOZA specifically addressed the fact that it could not determine the same.

V. The BOZA Set Forth Written Explanatory Findings.

The BOZA did explain its findings in writing, as required by law. Its final order complies with the statutory requirements.

CONCLUSION

For all of the reasons stated above, this Court should not grant certiorari as there is no basis to do so under Rule 242, SCSCR, due to the fact that several of the Appellant's arguments are being raised for the first time, and due to the fact that the Court of Appeals made no error in correctly determining that the BOZA did not shift any burden onto the Appellants, did not make any finding outside of its limited statutory jurisdiction, and correctly made its findings in writing.

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