RECEIVED
Jun 23 2025
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. 2022-001796

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.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

David L. Paavola, SC Bar No. 100714
Kenison, Dudley & Crawford, LLC
440 Knox Abbott Drive, Suite 510
Cayce, South Carolina 29033
Telephone: (864) 242-4899
Email: paavola@conlaw.com
Attorney for Appellants

TABLE OF CONTENTS

ARGUMENT IN REPLY

This case presents the novel question of how a board of zoning appeals should treat material factual disputes that arise in the variance review process that fall outside of its limited statutory jurisdiction and how to avoid shifting the burden of proof away from the variance applicant. It also concerns the sufficiency of a board of zoning appeals' written explanatory findings and the gaps that necessarily occur when those findings simply restate the statutory elements without more.

The Court of Appeals and Respondents take too narrow a view of the Oconee County Board of Zoning Appeals' (hereinafter, the "BOZA") actions and the resulting impact on the neighboring landowners. They fail to recognize the burden that was placed on the Ratliff Family by the BOZA after it approved the variance request based on its assumption that Oconee County held a prescriptive easement over the Ratliff Family's property, and they fail to acknowledge that the BOZA's assumption that the Ratliff Family's road was public had the same practical result as if the BOZA had made an explicit finding on this disputed issue. Boards of zonings appeals do not have jurisdiction to resolve factual disputes that fall outside of the scope of the variance statute. Certiorari is warranted on this issue to provide guidance to future boards of zoning appeals across South Carolina and to correct the lower court rulings.

Certiorari is also warranted to address the variance statute's requirement that boards of zoning appeals set forth written explanatory findings. The Court of Appeals and Respondents take the position that a board of zoning appeals need do nothing more than simply restate the statutory elements as their written findings. When the legislature passed the statute, it surely intended that boards of zoning appeals provide more analysis in their written findings than simply restating the variance elements. Subsidiary to this issue are the analytical gaps that exist in this particular instance because of the BOZA's lack of explanatory findings: (1) the BOZA failed to consider and set forth written findings as to how Respondents suffered an unnecessary hardship where the

restrictions they sought to set aside existed at the time the owner purchased the property, and (2) the BOZA failed to explain any justification for the variance outside of profit maximization. If boards of zoning appeals can simply regurgitate statutory elements as their analysis, then they will have no motivation to set forth sufficient findings when, as here, the issues are highly contested and complex, and it effectively makes their decisions unreviewable. Certiorari is warranted to correct this fallacy.

Background in Brief

To build a nineteen-home subdivision, Respondents need to build a 50' wide road with direct access to a public road. Respondents' variance request for a 32' wide road was premised on Oconee County having a prescriptive easement from longtime maintenance over the dead-end section of Ellenburg Road. (R. p. 642, lines 11-13; p. 746, line 24-p. 747, line 4, p. 825, lines 15-17). The Ratliff Family disputed that Oconee County held a prescriptive easement over this Disputed Section of Road based on forty years of family ownership and maintenance, which was consistent with the county declaring for decades with its sign that the "End of County Maintenance" was before the Ratliff Family property, and consistent with historic county repaving projects that ended before the Ratliff Family property. (R. pp. 138-144 (images of road striping), pp. 159-60; p. 484; p. 685, lines 1-11).

The Oconee County Board of Zoning Appeals gave Respondents the opportunity to address this dispute during the five months between November 2021 and April 2022. In the end, all that Oconee County presented to BOZA was one employee's statement that the roads department had institutional memory of past maintenance, but no maintenance records were provided, and neither were any records of public dedication or reversion from the state road system. (R. p. 835, lines 1-3, line 23-p. 836, line 10). The Ratliff Family provided sworn affidavits showing that their family and the neighbors maintained the roadway and the county installed an End of County Maintenance

sign before their property began. (R. pp. 159-60, p. 484). With this conflicting information and continuing dispute, the BOZA decided to assume, "without deciding," that Oconee County held a prescriptive easement over the Disputed Section of Road. (R. p. 912, lines 14-19). Based on this assumption, BOZA granted the variance request, leaving it to the Ratliff Family to separately challenge the assumption that Oconee County has a prescriptive easement over their property. (R. p. 908, lines 8-21).

I. Boards of Zoning Appeals Need Guidance on Handling Factual Disputes that Fall Outside of Their Statutory Jurisdiction.

Every board of zoning appeals must have a framework for handling factual disputes and for determining whether a factual dispute is a predicate issue that must be resolved prior to, or in conjunction with, a variance request. If it is, the board must then determine if the factual dispute falls within its limited statutory jurisdiction to resolve. Many factual disputes will fall within the board's limited jurisdiction, but others will not.

This analysis did not take place here. Instead, when the Ratliff Family disputed that their section of road was public and could be used to satisfy Respondents' variance requirements, the BOZA recognized that this factual issue must be resolved in conjunction with the variance request, but it did not consider whether it had the jurisdiction to do so. (R. p. 766, line 20-p. 767, line 1 ("[D]oes the county have the - - do we have the authority to give this [variance] . . . if the county has maintained it or we abandoned it. . . . [I]f the county doesn't then we're - - we have no authority."). Instead, the BOZA jumped right to fact gathering. Five months later, when Oconee County produced no maintenance records and no other documents showing that it held any rights over the Disputed Section of Road, and the Ratliff Family had provided sworn affidavits supporting their position, (R. pp. 159-60, p. 484), the BOZA now suddenly decided it did not have the authority to resolve this issue, (R. p. 907, line 1 – 908, line 17).

At this point, the BOZA could have required the developer/applicant to resolve the disputed public/private road issue prior to, or as a condition of, the variance approval. Instead, BOZA simply assumed a resolution of the issue in the developer/applicant's favor. This is where Respondents and the Court of Appeals fail to appreciate that a "non-decision" can have the same practical effect as an explicit decision. By assuming the road was public—a requirement the developer needed to satisfy in order to obtain a variance and to build a road to service nineteen homes—this disputed issue was for all practical purposes resolved in the developer's favor. The developer now had all it needed, an approved variance without any requirement to resolve the predicate factual dispute. The burden was now squarely on the Ratliff Family to initiate an action to challenge the county's rights over its land. The BOZA recognized this would be the outcome if the landowners disputed their conclusion. (R. p. 908, lines 8-13, p. 912, lines 14-19). This was an unfair burden shifting and error. Neighboring landowners should not be required to carry the burden to prove a necessary element of a developer's variance request, but that is what happened here.

Additionally, the Court of Appeals erred in concluding that the BOZA did not decide the disputed public/private nature of the Disputed Section of Road simply because the BOZA stated that it was not deciding the prescriptive easement issue. (Court of Appeals Order at 6). In fact, the variance order reflects that the BOZA did affirmatively decide that the road was public because as part of variance approval, BOZA ordered the abandonment of certain portions of the road. (R. p. 636 "Order approved subject to proper abandonment procedures . . . ."). The only way to read this order is to conclude that the BOZA did in fact determine that the Disputed Section of Road was public. Based on this conclusion, the BOZA ordered the parties to go through the public abandonment process to transfer a portion of the existing public road to the Ratliff Family as part

of the variance approval. The BOZA did in fact decide that the Disputed Section of Road was public, which was outside of its limited statutory jurisdiction. This was error.

II. The BOZA Failed to Set Forth Written Explanatory Findings.

Appellants have consistently argued from the beginning of this case that the BOZA's order lacked the statutorily required written explanatory findings. (R. p. 35 ¶ 73 (Am. Compl.)). There is no dispute that the BOZA did not explain its findings in writing as required by law because its final order simply regurgitates the statutory elements of a variance. (R. p. 636). Respondents offer no response in opposition. This was certainly a complicated case that required further written explanation. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 35, 606 S.E.2d 209, 212 (Ct. App. 2004) ("While an exhaustive written decision may not be warranted when a narrow issue may be addressed succinctly by the Board, further detail will surely be required in more complicated cases." (emphasis added)).

Appellants initially focused only on one particular deficiency of the written findings, the failure of the BOZA to explain the absence of detrimental impact when the location of the proposed road kept changing and under certain scenarios could require more of the Ratliff Family property. (Final Br. Appellant 25-28). However, it is evident on the face of the variance order that the BOZA failed to set forth written findings on any of the required statutory elements. This was error.

III. Conditions Existing at the time of Purchase Cannot Form the Basis of an Unnecessary Hardship.

The BOZA's failure to set forth written explanatory findings extends to the BOZA's failure to explain how ordinances existing at the time Respondents Globe and Farmes purchased the property unreasonably restrict use of the property. (R. p. 636 ¶ 3). BOZA was fully aware that the current development restrictions on Arrowhead Point existed at the time Globe and Farmes

purchased the property because this fact was provided during the hearings by the Ratliff Family and affirmed by the county. (R. p. 880, line 10-p. 881, line 9, pp. 167-179; p. 902, lines 7-12).

Respondents acknowledge that this Court has ruled that a "claim of unnecessary hardship cannot be based upon conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that a nonconforming use would work as an unnecessary hardship upon him." *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 217, 516 S.E.2d 442, 447 (1999) (citing *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965)). However, Respondents suggest this precedent should be ignored because this issue was not preserved. This issue is fairly encompassed in Appellants' argument that the BOZA failed to set forth written explanatory findings, which necessarily requires the BOZA to identify a basis for hardship. SCACR 242(d)(2) ("A question presented will be deemed to include very subsidiary question fairly comprised therein.").[1]

BOZA's determination that a preexisting condition can qualify as an unnecessary hardship is contrary to this Court's precedent and should not be permitted to stand.

IV. Profit Maximization Should Not Be Considered By BOZA.

Again, the BOZA's failure to fully set forth explanatory written findings resulted in a gap in its analysis of profit considerations. The BOZA cannot grant a variance based on a more profitable use of property. S.C. Code. Ann. § 6-29-800(A)(2)(d)(i). Here, the record is devoid of any non-economic, non-financial reasons identified by the BOZA supporting its determination of an unreasonably hardship apart from a restriction on development density. (R. p. 941, lines 1-21;

[1] Moreover, "appellate courts are to be mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner." *Moses v. State*, 442 S.C. 263, 269, 898 S.E.2d 174, 177 (Ct. App. 2024) (citation and internal quotation marks omitted).

944, line 14 - 945, line 9). Finding a restriction on development density to be an unnecessary hardship is simply an improper profit consideration in disguise.

Respondents argue that this issue is not preserved for review. As with the previous question presented, this issue is fairly encompassed in Appellants' objection that the BOZA's failed to set forth written explanatory findings on all required statutory elements. SCACR 242(d)(2). To satisfy that requirement, the BOZA had to issue a written finding that it was granting the variance for some reason *other than* increased profitability.

Additionally, the Court of Appeals directly addressed this issue in its order when it cited the statutory prohibition on granting a variance based on profitably and noted the BOZA's statement that it did not consider the economic impact of the development. (Order at 5 & n.4). However, the court's opinion stops short of giving this issue full treatment and only considers profitability from the county's perspective. The court acknowledges that the difference in maximum allowable density from three homes to nineteen homes is the sole reason the BOZA concluded that the existing ordinance effectively prohibited or unreasonably restricted utilization of Arrowhead Point. (Order at 9). According to Respondents, this shows that profit maximization was not the only grounds on which the BOZA granted the variance. (Return at 8–9.) However, the court fails to explain how a desire to maximize development density is not simply a desire to maximize profits. It is disingenuous to suggest that Respondents seek the variance for any reason other than to extract more profit from the land by developing more homes. In this context, profit and development density are one and the same.

Certiorari should be granted to provide guidance on whether an increase in development density standing alone is a sufficient basis to justify a variance request.

CONCLUSION

For all of the reasons stated above, this Court should grant certiorari to (1) provide guidance to future boards of zoning appeals on handling disputed issues of fact that fall outside of their limited statutory jurisdiction and how to avoid burden shifting away from the variance applicant; (2) provide continued guidance to boards of zoning appeals on providing sufficient written explanatory findings; (3) preserve precedent that existing conditions cannot form the basis of an unnecessary hardship for a variance request; and (4) clarify that limitations on development density are profit considerations.

/s/ David L. Paavola
David L. Paavola, SC Bar No. 100714
Kenison, Dudley & Crawford, LLC
440 Knox Abbott Drive, Suite 510
Cayce, South Carolina 29033
Telephone: (864) 242-4899
Email: paavola@conlaw.com
Attorney for Appellants

Cayce, South Carolina
June 23, 2025