

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2012-CP-32-01294
Appellate Case No. 2013-000314

Scarlet Williams Appellant,

v.

Lexington County Board of Zoning Appeals Respondent.

INITIAL BRIEF OF RESPONDENT

Jeff M. Anderson
W. Joseph Maye
DAVIS | FRAWLEY, LLC
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29071
Phone No.: (803) 359-2512
jeffanderson@oldcourthouse.com
Attorneys for Respondent

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE LEXINGTON COUNTY ZONING BOARD OF APPEALS ERR IN CONCLUDING THAT DOG GROOMING WAS A PROHIBITED ACTIVITY FOR THE SUBJECT PROPERTY UNDER THE LEXINGTON COUNTY ZONING ORDINANCE?**

The Respondent, Lexington County Board of Zoning Appeals, respectfully submits the following legal brief in support of the Eleventh Circuit's holding in the Order signed January 11, 2013, affirming the Lexington County Board of Zoning Appeals' decision that dog grooming is a prohibited activity for her residence under the Lexington County Zoning Ordinance.

STATEMENT OF THE CASE

This matter comes before this Court as an appeal of the Eleventh Circuit's decision to uphold the denial of Appellant Williams' appeal to the County Board of Zoning Appeals, requesting permission to conduct a dog grooming service at her residence.

Appellant was operating a dog grooming home business at her residence, but after anonymous complaints were brought to the attention of the Lexington County Zoning Office, the Zoning Administrator discovered the grooming business and concluded that it was a prohibited activity at this location, pursuant to the County Zoning Ordinance. Transcript of Hearing Before Board (hereinafter referred to as "Transcript") p. 1-2. Mrs. Williams appealed the Administrator's decision to the Lexington County Board of Zoning Appeals. The Board, in its February 21, 2012 hearing concluded that operating a kennel, which is a prohibited activity under the RL5 zoning for the road at Appellant's residence, could not be allowed as a home occupation because "kennels" are a prohibited type of home occupation, and the definition of "kennel" included dog grooming services. Transcript, p. 20. The Lexington County Board of Zoning Appeals unanimously denied Mrs. Williams' appeal on the grounds that dog grooming was an included and prohibited activity within the definition of operating a kennel. *Id.* at 20-21.

Appellant then brought her appeal before the Court of Common Pleas for the Eleventh Circuit. In the January 11, 2012 Order, the Circuit Court found that there was evidence in the record to support the Zoning Board's decision, and the Board's decision was not arbitrary,

capricious, or an abuse of discretion, had a reasonable relation to a lawful purpose, and is correct as a matter of law. Circuit Court Order of Jan 11, 2012 (hereinafter referred to as "Order"), p. 4. The Circuit Court upheld the Boards denial of Mrs. Williams appeal on these grounds. Order, p. 3-4.

Appellant has appealed the Eleventh Circuit's decision.

STATEMENT OF FACTS

Appellant Williams resides at 120 Wigmore Lane, Lexington South Carolina, located in the Richmond Farms subdivision. Transcript, p. 18. Appellant was performing dog grooming services at her residence at this address. Transcript, p. 10; Order, p. 1. The County Zoning Office received anonymous complaints, investigated the matter, and discovered Appellant's home dog grooming business. Transcript, p. 1-2; Order, p. 1.

The road classification for Appellant's property is zoned RL5, and prohibits the operation of kennels, catteries, and stables. Lexington County Zoning Ordinance, Section 22.02; Transcript, p. 2; Order, p. 1. In an effort to try and accommodate this activity, the Zoning Office reviewed the Lexington County Ordinance to determine whether such activity qualifies as a permitted home occupation under Section 21.22 of the Lexington County Ordinance. Transcript, p. 2; Order p. 1-2. However, after reviewing Sections 21.22, the Zoning Office concluded that dog grooming services were not a permitted as a home occupation. Transcript, p. 3-4; Order, p. 1-2. The Zoning Office found that the Home Occupation Ordinance prohibits the operation of kennels, and the definition provided for "kennels" in 21.10 includes the act of dog grooming. *Id.* Mrs. Williams then proceeded to appeal this decision to the Lexington County Board of Zoning Appeals. The same conclusion was reached by the Board and her appeal was denied. Transcript,

p. 20-21; Order, p. 3. The Circuit Court later affirmed the decision of the Zoning Board on January 11, 2012. Order, p. 4.

STANDARD OF REVIEW

The Court of Appeals applies the same standard of review as the circuit court below. S.C.Code Ann. § 6-29-840(A) (Supp.2003); *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (S.C. Ct. App. 2004). The findings of fact made by the County Board of Zoning Appeals shall be treated in the same manner as findings of fact by a jury, and the court may not consider additional evidence in reviewing the questions presented by the appeal. *Id.* "The factual findings of the jury will not be disturbed unless a review of the record discloses that there is *no evidence* which reasonably supports the jury's findings." *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (S.C. Ct. App. 2000) (citing *Sterling Dev. Co. v. Collins*, 309 S.C. 237, 240, 421 S.E.2d 402, 404 (S.C. 1992)). S.C. Code Section 6-29-840 requires considerable deference be given to a board's findings of fact. *Id.* "[A] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (S.C. Ct. App. 2004) (citing *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (S.C. 1999)). The reviewing court shall determine only whether the decision of the Board is correct as a matter of law. *Austin*, 606 SE.2d at 211. A decision of a municipal zoning board will only be overturned if the reviewing court finds the decision to be arbitrary, capricious, lacking a reasonably relation to a lawful purpose, or if the board has abused its discretion." *Id.*

ARGUMENT I

- I. **THE CIRCUIT COURT DID NOT ERR IN FAILING TO FIND THE LEXINGTON COUNTY BOARD OF ZONING APPEALS' DECISION AS CONTRARY TO THE LAW BECAUSE "KENNELS" ARE PROHIBITED UNDER RL5 ROAD CLASSIFICATIONS AND AS HOME OCCUPATIONS UNDER THE ZONING ORDINANCE, AND DOG GROOMING IS AN INCLUDED ACTIVITY WHICH CONSTITUTES A KENNEL UNDER THE LANGUAGE OF THE ORDINANCE.**

The Circuit Court correctly concluded that the Lexington County Board of Zoning Appeals' decision was not contrary to the law, and supported by evidence within the record. The Lexington County Ordinance is clear as to what is prohibited under these circumstances. RL5 road classifications and Home Occupations prohibit the operation of kennels on the subject property, and "kennel" includes the activity of dog grooming services. Ordinance Section 22.02; Transcript, p. 20. Based on the evidence in the record, the standard of review for this court, and the deference given to zoning board decisions, this Court should affirm the Circuit Court's ruling.

The Circuit Court's standard of review is limited to determining whether the Board's conclusions were arbitrary, capricious, lacking reasonable relation to a lawful purpose, or an abuse of discretion. *Id.* Likewise, the Court of Appeals' is limited to the same standard of review. *Id.*

As required under S.C. Code Section 6-29-840, the Circuit Court may hear an appeal of the findings and conclusion of a Board of Zoning Appeals. S.C. Code Ann. § 6-29-840(A) (2003). The findings of fact made by the Board must not be disturbed, and the ability to overrule the Board is limited to instances where there is *no evidence* to support the Board's conclusions. *Vulcan Materials Co.*, 536 S.E.2d at 896. Substantively, the Lexington County Board of Zoning Appeals has the authority to interpret its Zoning Ordinance in matters such as this. *Clear*

Channel Outdoor v. The City of Myrtle Beach, 360 S.C. 459, 465, 602 S.E.2d 76, 79 (S.C. Ct. App. 2004). Deference is given to the Board unless no evidence can be found which supports the Board's decision. *Vulcan Materials Co.*, 536 S.E.2d at 896. This deference is provided not only to decision of whether to award requested relief or variance, but also applies to a Board's legal interpretation of Zoning Ordinances. *Clear Channel Outdoor*, 602 S.E.2d at 79. In reviewing the Circuit Court's holding, if this Court finds any evidence supporting the Board's decision, it must also grant deference to that decision. *Vulcan Materials Co.*, 536 S.E.2d at 896.

As required by S.C. Code Section 6-29-800(F), the Board of Zoning Appeals made a detailed finding of fact and conclusions of law in the matter after entertaining a lengthy hearing and discussion on Mrs. Williams' appeal. S.C. Code Ann. § 6-29-800(F) (2003); Order, p. 3.

As was put forth in the Record, Section 21.10 of the Lexington County Zoning Ordinance states in pertinent part that "Kennels, Catteries, and Stables include any person, establishment, partnership, corporation, or other legal entity that owns, keeps, harbors, or is a custodian of domestic animals and/or domestic fowl kept or used . . . for the purpose of commercial boarding, grooming, sale, or training." Transcript, p. 4. The Board interpreted this language and concluded that the explicit discussion of "grooming" included it as a activity constituting a kennel and found it prohibited by RL5 road classifications under the Ordinance. Transcript, p. 2. The Board's interpretation of the Section 21.10 is correct in this matter, and no inference was necessary to question whether "grooming" is a included and equally prohibited activity under RL5 road classifications. Such interpretation is nonetheless entitled to deference, as it is supported by the evidence in the record. *Clear Channel Outdoor*, 602 S.E.2d at 79.

The Board then addressed "Home Occupation" exceptions. As is indicated in the record, Section 21.22 of the Lexington County Zoning Ordinance states: "A home occupation shall not

include . . . animal impoundment activities (kennel) and shall be subject to the performance standards contained in this Ordinance as applicable." Transcript, p. 4. Here the Board acknowledged the specific prohibition of "kennels" and in conjunction with the definition of "kennel" provided in Section 21.10, concluded that home occupations prohibited dog grooming as well. Transcript, p. 3. The Board's interpretation was simply a matter of reading the two portions of the Ordinance together. On this basis, Mrs. Williams appeal was denied. Transcript, p. 20-21. Again, the interpretation is not contrary to the law and entitled to deference. *Clear Channel Outdoor*, 602 S.E.2d at 79.

The Circuit Court reviewed the chart of permitted activities for various road classifications as discussed by the Zoning Administrator and agreed with the Board of Zoning that RL5 classifications prohibits "Kennels, Catteries, and Stables." Order, p. 3. The Circuit Court then evaluated the discussion heard by the Board regarding whether dog grooming is an included activity constituting a kennel. *Id.*

The record shows that a verbatim recitation of Zoning Ordinance Section 21.10 was provided to the Board. Transcript, p. 4. That Section clearly lays out what constitutes the operation of a kennel, and "grooming" is explicitly mentioned. The Circuit Court found this evidence sufficient to support the Board's conclusion that "grooming" was a prohibited activity within the description of a "kennel" under Lexington County Ordinance Section 21.10. Order, p. 3. The Circuit Court thus found this evidence to be sufficient to support the Board's decision that RL5 road classifications prohibit dog grooming services, given they are included in the definition of a kennel.

The Circuit Court then reviewed the record discussing whether a Home Occupation exception could be made for grooming services. *Id.* The record provides a recitation of Zoning

Ordinance Section 21.22 which indicates that "animal impoundment activities (kennel)" are not permitted home occupation activities. Transcript, p. 4. The Circuit Court found sufficient evidence to support the conclusion that home occupations cannot include kennels, and given the language of Section 21.10, "Kennel" would again include dog grooming. Order, p. 3. The Circuit Court acknowledged and supported the Zoning Board's interpretation that Zoning Ordinance Section 21.10 and 21.22, when read together, indicate that domestic animal grooming is an included activity constituting a kennel and is prohibited by road classification RL5 as well as by Home Occupation restrictions. *Id.*

The Circuit Court found sufficient evidence within the record to support the Board of Zoning Appeals' decision. *Id.* at 3-4. The Circuit Court further concluded that the Board of Zoning Appeals' decision was not arbitrary, capricious, lacking reasonable relation to a lawful purpose, or an abuse of discretion. *Id.* The evidence provided in the Board of Zoning Appeals hearing provides a sound basis for the interpretation adopted by the Board of Zoning Appeals, and pursuant to its scope of review, the Circuit Court affirmed the Board of Zoning Appeal decision on those grounds. *Id.* Given the evidence and the fact that a South Carolina Court of Appeals is limited to the same standard of review, the Circuit Court's ruling should be affirmed.

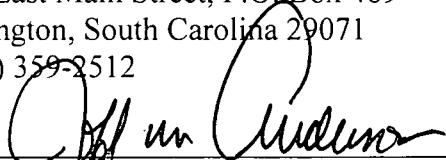
CONCLUSION

The Circuit Court was correct in finding that sufficient evidence existed for the Board of Zoning Appeals to conclude that dog grooming was a prohibited activity under RL5 road classifications, as well as under Home Occupation exceptions. As such the Circuit Court's affirmation of Mrs. Williams' denied appeal was proper.

The South Carolina Court of Appeals is held to the same standard of review as the Circuit Court. The findings of fact made by the Board must not be disturbed, and if any evidence is

present to support the Board's conclusion, then deference from this Court should be given to that conclusion. The Board found that the Lexington County Zoning Ordinance definition of "Kennel" includes dog grooming, "kennels" are prohibited by RL5 road classifications and Home Occupation exceptions, and consequently dog grooming cannot be permitted under the circumstances of this case. The Circuit Court decision should therefore be affirmed.

DAVIS | FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-2512

BY:  _____

Jeff M. Anderson
ATTORNEY FOR RESPONDENT

BY:  _____
W. Joseph Maye
ATTORNEY FOR RESPONDENT

Lexington, South Carolina
September 23, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

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Appellate Case No. 2013-000314

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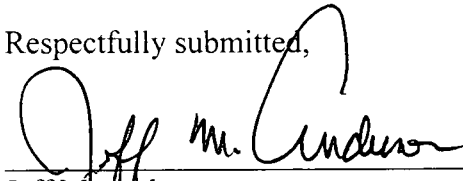
Lexington County Board of Zoning Appeals Respondent.

**RESPONDENT'S SUPPLEMENTAL DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

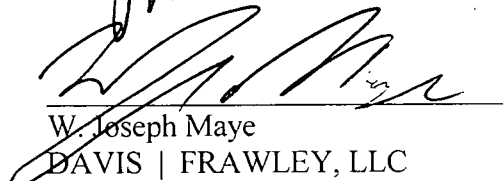
The Respondent designates the following item to be included on the Record on Appeal and the Designation contains no matter which is irrelevant to the appeal:

1. Lexington County Zoning Ordinance Section 22.02 - "Chart of Permitted Access by Street Classification."

Respectfully submitted,



Jeff M. Anderson



W. Joseph Maye
DAVIS | FRAWLEY, LLC
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29071
Phone No.: (803) 359-2512
jeffanderson@oldcourthouse.com
Attorneys for Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)

Civil Case No: 2012-CP-32-01294

Scarlet Williams,)
) **CERTIFICATE OF SERVICE BY MAIL**
Appellant,)
)
vs.)
)
Lexington County Board of Zoning Appeals,))
)
Respondent.)

We, Jeff M. Anderson, Esquire, and W. Joseph Maye, Esquire, attorneys for the County of Lexington Board of Zoning Appeals, hereby certify that we have served Renae Alt-Summers, Esquire, Attorney for the Appellant, with a copy of each of the foregoing Initial Brief of Respondent, and Designation of Matter for the Record on Appeal by mailing a copy of each, postage prepaid and return address clearly indicated on said envelope, to Ms. Alt-Summers at the following address:

Renae Alt-Summers, Esquire
The Giese Law Firm, LLC
1315 Blanding Street
Columbia, South Carolina 29201

on this 26 day of September, 2013, all in accordance with Rule 5 (b)(1) of the South Carolina Rules of Civil Procedure.

DAVIS FRAWLEY, LLC

By: Jeff M. Anderson
Jeff M. Anderson

By: W. Joseph Maye
W. Joseph Maye

Post Office Box 489, Lexington, SC 29071
ATTORNEYS FOR THE COUNTY OF LEXINGTON
BOARD OF ZONING APPEALS

Lexington, South Carolina

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