

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2013-000786

Garry and Carolyn Coulter, George and
Betsy Zimmerman, Michael and Michelle
Shain, and Fredrick Eugene Jones,

Appellants,

v.

City of Greenville Board of Zoning Appeals,
City of Greenville, and Carol Stilwell,

Respondents.

INITIAL BRIEF OF RESPONDENTS CITY OF GREENVILLE BOARD OF ZONING
APPEALS AND CITY OF GREENVILLE

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

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STATEMENT OF THE CASE

Carol Stilwell's home is located at 2407 Augusta Street, in the City of Greenville. The property is zoned R-6, a single-family residential district. "The R-6 district is intended to preserve and encourage single-family residential development with a minimum lot size of 6,000 square feet. Complementary uses customarily found in residential districts, such as community recreation facilities, place of worship, and schools may be allowed." §19-3.2.2(A), Greenville City Code. Single family dwellings with a detached garage are unequivocally permitted in an R-6 district. The following uses are allowed by a special exception in R-6 districts; community services, schools, emergency response facilities, police sub-stations, religious institutions, golf courses, greenways, parks, communication towers, minor utility stations, and **bed and breakfast inns**. §19-4.1.2, City Code (emphasis added).

On May 21, 2012, Ms. Stilwell applied to the City of Greenville for a special exception to operate a bed and breakfast inn at her home.

Upon receiving the application, staff members of the City's Planning and Zoning Department studied the application, the facts and circumstances of the location, reviewed the applicable standards and prepared a staff report for the Board of Zoning Appeals. The Board of Zoning Appeals possesses the sole authority to grant a special exception. In the instant case, applying the criteria for issuing a special exception, Planning and Zoning staff members reported that Ms. Stilwell's application complied with the standards for granting a special exception and they reported so to the Board of Zoning Appeals.

On June 21, 2012, the City's Board of Zoning Appeals held a hearing on Ms. Stilwell's request for a special exception to operate a bed and breakfast inn in an R-6 district. The Board began by listening to staff outline the character of the application and then heard from Ms. Stilwell, who as the applicant presented her case to the Board (BZA Transcript, page 7-15). When Ms. Stilwell finished her remarks, the Board invited those opposed to the application to speak. The Chairwoman of the Board indicated that each side, opponents and supporters, would have a total of five minutes to present remarks. While the Board was discussing how to divide the five minutes each side got (i.e. how many minutes to give each speaker), Appellant Coulter interjected by addressing the Board's chairwoman and stating "Madame, that'll work on the opposition side, and we're prepared to just do it as a group to come in under time..." (Transcript page 16, line 1). Appellant Coulter asserted two reasons that the Board should deny Ms. Stilwell's application. He said he did "not agree with the staff report as far as its impact to the community" (Transcript page 17, line 24) and he did not "think it conforms to the Historic Comprehensive Plan for Augusta Road" (Transcript page 17, line 25). Appellant Coulter used most of the remainder of his presentation time to pose questions to the Board. Finally, Appellant Coulter indicated "the only other thing I wanted to add before I pass off to one of my next people is that the ---I complained about this originally because three construction guys were sitting on that side porch." (Transcript page 21, line 22). Mr. Coulter took far more time than the five minutes, and the Board did not interrupt him, but afforded him all the time he wanted. Appellant Coulter then yielded the floor to Mary Allison Zimmerman. Ms. Zimmerman read a letter prepared by her father, Appellant George Zimmerman, a nearby resident. The thrust of the letter was a

complaint that allowing “a bed and breakfast at this location is nothing more than allowing a commercial use in a single family neighborhood” (Transcript page 24, line 4). At the end of the opposition’s presentation, Appellant Coulter did not indicate he had any more remarks to add, did not offer any more remarks, and was not prevented by anyone from offering any additional comments (See Transcript page 27, line 13). Indeed no one appearing in opposition spoke up to request additional time.

Three supporters of Ms. Stilwell’s application presented testimony to the Board. Ken Padgett, who described himself as the neighbor to the right of Ms. Stilwell’s property, said “if you sit on our rear porch, Carol’s –Dr. Cline’s (Cline is Ms. Stilwell’s maiden name) – visitor parking is within 20 feet of our rear porch” (Transcript page 29, line 6). He also stated “I don’t think there is anyone in this room that is more subject to the impact of what she’s going to do than we are” (Transcript page 29, line 8). He went on to refute the opposition’s complaint about parking issues and public nuisances. He also addressed the concern that Ms. Stilwell could sell the property to someone less committed to the neighborhood by pointing out for the Board that “My deed for the property says that she has to transfer to me all of her visitor parking as soon as she moves. She would have no ability to meet the (parking) requirements of the ordinance once she elected to sell. The property becomes mine.” (Transcript page 30, line 22). Most notably Mr. Padgett went on to testify that he is the former City Planner for the City of Greenville and that “It (a bed and breakfast) is the perfect transitional use for a neighborhood like that. The home is perfectly situated for it” (Transcript page 31, line 17).

At the conclusion of public comments, the Board deliberated the matter in an open forum and unanimously approved the application finding the use is consistent with the Comprehensive Plan, complies with the specific use standards, is compatible with the character of the surrounding lands, and does not have a substantial adverse impact (Transcript page 48, line 20 through page 52).

On June 25, 2012, the Board of Zoning Appeals, by and through the City's Zoning Administrator, issued its decision approving Ms. Stilwell's application for a special exception to operate a bed and breakfast at her home.

On July 23, 2012, Appellant's filed a timely notice of appeal with the Greenville County Court of Common Pleas.

On December 5, 2012, Appellant's appeal was heard before the Honorable D. Garrison Hill. By order of the court dated February 19, 2013, Judge Hill affirmed the decision of the Board of Zoning Appeals granting Ms. Stilwell a special exception. Appellants filed a timely Motion to Alter or Amend Judgment on March 4, 2013. Judge Hill denied Appellant's motion.

Appellants filed a timely notice of appeal with the South Carolina Court of Appeals on April 15, 2013.

ARGUMENTS

1. THE FINAL DECISION OF THE BOARD OF ZONING APPEALS IS IN WRITING AND SEPARATELY STATES ALL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND THEREFORE SATISFIES THE REQUIREMENTS OF STATE LAW AND CONSEQUENTLY SHOULD NOT BE DISTURBED.

Appellant correctly asserts that §6-29-800(F) of the South Carolina Code of Laws, 1976, as amended, provides that “all final decisions and orders of the board must be in writing...” and that “all findings of fact and conclusions of law must be separately stated in final decisions or orders of the board...”

Appellant argues that, in this case, the written decision of the BZA “fails to make any finding of fact or conclusion of law in regards to compliance with the use specific standards.”

That argument has no merit. The written decision of the Board of Zoning Appeals could not be any clearer. The second paragraph, on page one of the Board’s decision, reads as follows: “The Board heard from the Applicant and provided an opportunity for others in support of, or in opposition to, the application to provide information on the record. The record of evidence presented and the Board’s deliberations established the following findings of fact and conclusions of law in support of this decision.”

The second bullet point under that paragraph reads exactly as follows: “**The Use Will Comply With the Use Specific Standards:** The Standards enumerated below automatically apply to a facility granted a Special Exception to operate a ‘Bed & Breakfast Inn’; to wit: (F) Bed and breakfast inn. (1) Generally. Bed and breakfast inns are limited to ten guest rooms. (2) Site standards. (a) Bed and breakfast inns in residential

districts shall not to (sic) be located within 200 feet of another bed and breakfast inn or group living facility. (b) Parking for a bed and breakfast inn shall not be located in the front of the facility and may be approved as turf or a pervious pavement system.”

There is no other way to interpret this written decision of the Board than to conclude that it is in writing and that it separately states the finding that the use will comply with the “Use Specific Standards,” particularly regarding the number of rooms, the location not within 200 feet of another bed and breakfast or group living facility, and the parking arrangement.

Furthermore, it is an established practice that courts reviewing the decisions of zoning boards may look to written documents as well as records of proceedings as formats for final decisions. “Though the statute does not specify the form the writing must take, it is well settled that courts reviewing the decisions of zoning boards and other administrative agencies may look to written documents as well as records of proceedings as sufficient formats for final decisions. “For example, in *Vulcan Materials Co. v. Greenville County Board of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000), this court upheld a circuit court finding that a transcript of a zoning board hearing constituted a sufficient final written decision.” *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). A review of the transcript of the BZA hearing, page 49, line 1, wherein Board member Sherard states as part of his motion to approve Ms. Stilwell’s application “The use will comply with the Specific Use Standards,” reveals that the Board did in fact find the use will comply with the Use Specific Standards.

2. IN DECIDING WHETHER TO APPROVE AN APPLICATION FOR A SPECIAL EXCEPTION, THE BOARD OF ZONING APPEALS MAY CONSIDER EVIDENCE FROM A NUMBER OF SOURCES IN ADDITION

TO THE APPLICANT'S TESTIMONY AT THE HEARING AND THE BZA HAS PROPERLY DONE SO IN THIS MATTER AND THEREFORE THEIR DECISION SHOULD NOT BE DISTURBED.

In an attempt to make their point that the applicant for the special exception at issue here failed to carry an alleged burden of persuasion, Appellants spend five paragraphs of their brief asserting the notion that an applicant for a special exception must articulate evidence in support of her application in the form of testimony during the special exception hearing, even if the application itself and the evidence derived from the staff report have already made the key points. Appellant alleges "Respondent Stilwell, as the applicant, carried the burden to demonstrate that her application complied with the special exception permit standards," and "Respondent Stilwell failed to present any testimony or other evidence establishing that her proposed Bed & Breakfast location was not located within 200 feet of another bed and breakfast inn or group living facility." Appellants complain that "at no point during the BZA hearing did Respondent Stilwell or any BZA staff member present *any* evidence that Ms. Stilwell's home was not within 200 feet of another bed and breakfast or group living facility, as required by the use specific standard for Bed & Breakfast Inns," and "therefore, the BZA could not properly make a finding of fact and conclusion of law with regards to Respondent Stilwell's compliance with the use specific standards." Appellants went on in their brief complaining that "the Circuit Court affirmed the BZA decision despite Respondent Stilwell's failure to proffer any evidence whatsoever that her home complied with this use specific standard." Appellants even complained in their brief that "The City of Greenville tries to cure these errors by citing the Staff Report, but this reliance is misplaced. Pursuant to Greenville City Code §19-2.2.18, it is incumbent on the special exception applicant to demonstrate

compliance with approval standards, not the city staff.” Appellants also complained that “At the administrative appeal before the Circuit Court, counsel for the City of Greenville pointed to findings in the pre-public hearing Staff Report as evidence of compliance with use specific standards.” Appellants, in their brief, appear dismayed that counsel for the City would suggest that the BZA could, and apparently did, refer to a staff report when deliberating the approval or denial of a special exception. Appellants apparently base their argument in this section of their brief on their reading and interpretation of §§19-2.2.18 and 19-2.3.5(D) of the City Code.

§ 19-2.2.18 of the City Code states:

19-2.2.18 *Public hearing procedures.* All public hearings for applications held pursuant to this chapter shall comply with the following procedures:

(A) *Conduct of public hearing.*

(1) *Burden of proof or persuasion.* The **burden to demonstrate that an application complies with applicable approval standards of this chapter is on the applicant.**

(2) *Rights of all persons.* Any person may appear at a public hearing and submit testimony, either individually or as a representative of a person or an organization.

(3) *Exclusion of testimony.* The review board conducting the public hearing may exclude testimony that it finds to be irrelevant, immaterial or unduly repetitious.

(4) *Offers of testimony.* In the event any evidence is excluded as irrelevant, immaterial or unduly repetitious, the person offering such evidence shall have an opportunity at that hearing to state for the record what the evidence would be, its relevance, and the need for its admission.

(5) *Continuance of public hearing.* The board conducting the public hearing may, on its own motion, continue the public hearing to a fixed date, time and place.

§19-2.3.5(D) of the City Code states:

19-2.3.5(D) *Standards.* A special exception permit shall be approved only upon a finding that **the applicant demonstrates** all of the following standards are met:

(1) *Special exception.* For a use identified as a special exception in subsection 19-4.1.2, table of uses:

(a) *Consistent with the comprehensive plan.* The proposed special exception is consistent with the comprehensive plan.

(b) *Complies with use specific standards.* The proposed special exception complies with all standards in section 19-4.3, use specific standards.

(c) *Compatibility.* The proposed special exception is appropriate for its location and compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands, and will not reduce property values of surrounding lands.

(d) *Design does not have substantial adverse impact.* The design of the proposed special exception minimizes adverse effects including visual impacts of the proposed use on adjacent lands; furthermore, the proposed special exception does not impose significant adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, vibration, and does not create a nuisance.

The critical error that Appellants make with this line of reasoning is their not disclosing to the court the code section immediately preceding §19-2-3.5(D) of the City Code. That is § 19-2.3.5 (C) which explicitly directs the members of the Board of Zoning Appeals to “consider the **application, the relevant support materials, the staff report, the report of the technical advisory committee, and evidence presented at the hearing.**” §19-2.3.5 of the City Code reads as follows:

19-2.3.5 (C) *Procedure.*

(1) *Application review, public notification and scheduling hearing.* The procedures and requirements for submission and review of an application, public

notification, and scheduling the public hearing is established in section 19-2.2, common procedures.

(2) Review and action by board of zoning appeals.

The board of zoning appeals shall conduct a public hearing on the application pursuant to subsection 19-2.2.18, public hearing procedures. **At the public hearing, the board of zoning appeals shall consider the application, the relevant support materials, the staff report, the report of the technical advisory committee, and the evidence presented at the hearing.** After the close of the public hearing, the board of zoning appeals shall approve, approve with modifications, approve with conditions, or disapprove the application based on the standards in subsection 19-2.3.5(D), standards.

A brief review of the Staff Report and Application instantly demonstrates the existence of evidence sufficient to support the BZA's determination regarding use specific standards. Please see the Application, page 2, paragraph 2 under APPLICANT RESPONSE TO SECTION 19-2.3.5(D)(1). Please also see Staff Report, page 2, bullet number 2.

And of course, this supports the Circuit Courts decision to affirm the BZA. The Circuit Court recognized, as certainly the Court of Appeals knows, it is not for an appellate court to weigh the evidence. It is merely for them to determine some evidence exists in the record upon which the trial tribunal (the BZA in this case) based its decision.

3. THE APPELLANTS WERE PROVIDED MORE THAN ADEQUATE TIME TO SPEAK AT THE BOARD OF ZONING APPEALS' HEARING REGARDING THIS APPLICATION FOR A SPECIAL EXCEPTION AND THEREFORE THE DECISION OF THE BOARD SHOULD NOT BE DISTURBED.

The procedures for the Board of Zoning Appeals to hear an application for a special exception are set forth in the City Code.

Section 19-2.2.9 of the Code addresses the required notification for a hearing and states as follows:

19-2.2.9 *Public notification.* All applications requiring public hearing(s) shall comply with the S. C. Code of Laws, the provisions listed in table 19-2.2-1, required notice and timing, and the other provisions of this section with regard to public notification.

(A) *Content of mailed and published notice.* All mailed and published notices for public hearings shall:

(1) Identify the application number and the name of the applicant or the applicant's agent.

(2) Indicate the date, time and place of the public hearing.

(3) Describe the site involved by street address or by tax map number (or both) and nearest cross street.

(4) Identify the current zoning district designation of the site subject to the application.

(5) Describe the nature, scope and purpose of the application or proposal.

(6) Indicate the date and hours of availability and describe in which department the application, staff report, and related materials may be inspected by the public.

(7) Include a statement describing where interested members of the public and adjoining property owners may submit written comments or evidence prior to the public hearing.

(8) Include a statement that interested members of the public and adjoining property owners may appear at the public hearing, be heard, and submit evidence and written comments with respect to the application.

Posted notice may provide a phone number by which the information required above is available.

(B) *Mailed notice.* When the provisions of this chapter (see subsection 19-2.2.9(E)) require that written or mailed notice be provided, the administrator shall be

responsible for preparing and mailing the written notice. Notice shall be mailed to:

(1) All property owners of the land subject to the application;

(2) All property owners within 500 feet of the land subject to the application whose address is known by reference to the latest ad valorem tax records; and

(3) Organizations that have Registered to receive notice pursuant to subsection 19-2.2.9(F), registration to receive notice by mail.

Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid. The administrator shall certify that notice meeting the content requirements of subsection 19-2.2.9.(A), content, was mailed. A copy of the mailed notice shall be maintained in the office of the administrator for public inspection during normal business hours.

(C) Published notice.

(1) When the provisions of this chapter require that notice be published, the administrator shall be responsible for preparing the content of the notice and publishing the notice in a newspaper of general circulation in the city. The content and form of the published notice shall be consistent with the requirements of the S.C. Code of Laws.

(2) The administrator shall prepare a certificate affirming that published notice has occurred pursuant to the requirements of this subsection.

(D) Posted notice.

(1) When the provisions of this chapter require that notice be posted on the site subject to the application, notice shall comply with the following requirements:

(a) Notice shall be posted on sign(s) in a form established by the administrator.

(b) The signs shall be placed by the applicant on the property that is subject to the application along each public street that abuts or transects the property, at intervals of not more than 500 feet.

(c) The sign(s) shall be posted in a manner that ensures visibility from public streets.

(2) The applicant shall sign and provide to the administrator a certificate stating that posted notice has been provided in accordance with the requirements of this subsection. The affidavit shall be submitted to the administrator prior to the public hearing for the subject application.

(3) The applicant shall ensure that the posted notice is maintained on the property until the completion of the public hearing on the application.

(4) The sign(s) shall be removed by the applicant within five days after the public hearing on the application.

(E) *Required notice and timing.* Unless otherwise expressly provided in the S.C. Code of Laws or this chapter, notice shall be provided as follows:

TABLE 19-2.2-1: REQUIRED NOTICE AND TIMING

	Notice Required (days before hearing/action)		
Application for Development Permit or Other Action	Mailed (subsection 19-2.2.9(B))	Publication (subsection 19-2.2.9(C))	Posted (subsection 19-2.2.9(D))
Amendment to zoning text		At least 15 days prior to public hearing	
Amendment to land development regulation text		At least 30 days prior to public hearing	

Amendment to official zoning district map planned development district preliminary plat for subdivision, land development permit for multifamily development	At least 15 days prior to public hearing	At least 15 days prior to public hearing	Not more than 18 nor less than 15 days prior to public hearing
Special exception permit, variance permit	At least 15 days prior to public hearing	At least 15 days prior to public hearing	Not more than 18 nor less than 15 days prior to public hearing
Appeal to board of zoning appeals, planning commission, design review panels	At least 15 days prior to public hearing	At least 15 days prior to public hearing	Not more than 18 nor less than 15 days prior to the public hearing
Certificate of appropriateness, unreasonable hardships	At least 15 days prior to public hearing		Not more than 18 nor less than 15 days prior to public hearing
Street name changes	At least 15 days prior to public hearing	At least 15 days prior to public hearing	
Development agreements		At least 15 days prior to public hearing	

(F) *Registration to receive notice by mail.* Any organization may register with the administrator to receive written notice of applications pursuant to subsection 19-2.2.9(B), mailed notice. To be eligible for registration, the organization shall provide the administrator information in the form required by the administrator to ensure notification can be made to the organization. To continue to receive such notice, an organization shall re-register every two years. A fee to cover the cost of providing such notice

may be required. In lieu of receiving written notice, the organization may request to receive an electronic mailing of notice (e-mail).

(G) *Deferral of application.* An applicant may request that an advisory or decision-making body's consideration of an application at a public hearing be deferred by submitting a written request for deferral to the administrator.

(1) *Administrative review.* The administrator shall consider and decide deferral requests if the public can be notified of the deferral within a reasonable period of time prior to the public hearing at which the application is to be heard. Such notification shall also provide the date of the re-scheduled public hearing at which the application will be considered by the advisory or decision-making body.

(2) *Review board review.* If the public cannot be notified of the deferral within a reasonable period of time prior to the public hearing at which the application is to be heard, the request for deferral shall be placed on the public hearing agenda of the advisory or decision-making body on the date the application is to be considered and acted upon by the body.

As the Court can see, an application for a special exception to be heard by the Board of Zoning Appeals requires notice of the hearing to be given by mail to neighbors, by publication in a newspaper, and the posting of the application property. Because there is no allegation by Appellants that the notice required by this section of the City Code was not properly given, all neighbors and interested parties, are presumed to have been duly notified. Taking that as established, one should properly proceed to the City Code section that addresses the procedure of the public hearing. Section 19-2.2.18 of the City Code does so, stating as follows:

19-2.2.18 *Public hearing procedures.* All public hearings for applications held pursuant to this chapter shall comply with the following procedures:

(A) *Conduct of public hearing.*

(1) *Burden of proof or persuasion.* The burden to demonstrate that an application complies with applicable approval standards of this chapter is on the applicant.

(2) *Rights of all persons.* Any person may appear at a public hearing and submit testimony, either

individually or as a representative of a person or an organization.

(3) *Exclusion of testimony.* The review board conducting the public hearing may exclude testimony that it finds to be irrelevant, immaterial or unduly repetitious.

(4) *Offers of testimony.* In the event any evidence is excluded as irrelevant, immaterial or unduly repetitious, the person offering such evidence shall have an opportunity at that hearing to state for the record what the evidence would be, its relevance, and the need for its admission.

(5) *Continuance of public hearing.* The board conducting the public hearing may, on its own motion, continue the public hearing to a fixed date, time and place.

(B) *General procedures and findings at public hearing.*

(1) *Time.* Any review board conducting a hearing shall act in accord with any time limits established in this chapter or the board's by-laws. Action shall be taken as promptly as possible in consideration of the interests of the applicant and the citizens of the city and shall include a statement of a recommendation or decision of approval, approval with modifications, approval with conditions, or disapproval (whichever is appropriate).

(2) *Form of decisions.* The form of all decisions as reflected in the minutes of the reviewing board shall include at least the following elements:

(a) Summary of information. A summary of the information presented before the body.

(b) Summary of evidence in record. A summary of all evidence submitted into the record.

(c) Statement of findings. A statement of findings or other factors considered, whichever is appropriate, and a statement of the basis upon which such facts were applied with respect to the relevant review standards, if required by state law.

(d) Recommendation or decision. A statement of the decision of approval, approval with modifications, approval with conditions, or disapproval (whichever is appropriate).

Having set out the procedures for notice of and the manner in which the Board shall conduct the public hearing, we now turn to the Appellant's complaint regarding this

hearing. Appellant complains that public hearing was “flawed and inadequate as a matter of law” and the “BZA’s decision to limit all public comment to ten minutes, and consequently leave all residents in opposition to a collective total of five minutes, was arbitrary, capricious and not reasonably related to a legitimate public purpose.” Appellant goes on to complain that “Although Mr. Coulter and Ms. Zimmerman were able to speak briefly at the hearing, they were not planned group representatives” and “During their limited appearances, Mr. Coulter and Ms. Zimmerman were unable to fully express their own individual concerns, much less those of a unified group formed after the start of a public hearing.” That representation is flat wrong. Appellant Coulter’s own statement at the public hearing is exactly the opposite of what the Appellants now assert in their brief. When the Chairwoman of the Board is discussing the allocation of two minutes of time to each side, opponents and supporters of the application, Appellant Coulter interjects “Madame, that’ll work on the opposition side, and we’re prepared to just do it as a group to come in under time.” (BZA transcript, page 16, line 1). How can Appellants now complain about any time limit when they indicated they were prepared to “just do it as a group and come in under time? Furthermore, a review of the transcript reveals that Mr. Coulter did nothing more than make a four sentence statement and then proceeded to try to ask the Board questions. (BZA transcript, page 17, line 21). If he had more to say, why stop after four sentences and then ask the Board questions. Why not continue to state reasons for his opposition. A rational review of the transcript reveals that the individual who indicated that he would be speaking for the group needed less than 30 seconds to state his reasons for opposition. Why is he now complaining about needing more time? Furthermore, a review of the transcript reveals that Mr. Coulter did

go on speak for several other pages in the transcript and then indicated, on his own, that “I’m just going to turn it over to one of the other neighbors right now and let...” (BZA transcript page 22, line 13). No one cut him off or prevented him from presenting any other information he wished to present. The other speaker, Appellant George Zimmerman’s daughter, Mary Allison Zimmerman, merely read letter from her father into the record. As you can see from a review of the transcript, she was allowed to read the entire letter in, presumably stating all she had to say at the hearing, was never interrupted by any Board member and finished her presentation by thanking the Board for their time. (BZA transcript, page 24, line 1 through page 26, line 17).

It is clear from the transcript that the Board was more than generous with any time limits and that the Appellants were allowed to say all they had to say at the public hearing.

4. THERE IS AMPLE EVIDENCE IN THE RECORD SUPPORTING THE BOARD OF ZONING APPEALS’ DETERMINATION THAT EACH OF THE FOUR STANDARDS FOR APPROVING A SPECIAL EXCEPTION HAVE BEEN MET AND THEREFORE THE DECISION OF THE BOARD APPROVING THIS APPLICATION SHOULD NOT BE DISTURBED.

As previously discussed in the brief, pursuant to the Greenville City Code of Ordinances, the Greenville City Board of Zoning Appeals must find that four “standards” are met before it may approve an application for a special exception. §19-2.3.5(D) of the City Code states:

19-2.3.5(D) *Standards.* A special exception permit shall be approved only upon a finding that the applicant demonstrates all of the following standards are met:

(1) *Special exception.* For a use identified as a special exception in subsection 19-4.1.2, table of uses:

(a) *Consistent with the comprehensive plan.* The proposed special exception is consistent with the comprehensive plan.

(b) *Complies with use specific standards.*

The proposed special exception complies with all standards in section 19-4.3, use specific standards.

(c) *Compatibility.* The proposed special exception is appropriate for its location and compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands, and will not reduce property values of surrounding lands.

(d) *Design does not have substantial adverse impact.* The design of the proposed special exception minimizes adverse effects including visual impacts of the proposed use on adjacent lands; furthermore, the proposed special exception does not impose significant adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, vibration, and does not create a nuisance.

Additionally, the Board is directed by the City Code to consider a number of different sources of information when deciding whether or not to approve an applicant's request for a special exception. §19-2.3.5 (C) states as follows:

19-2.3.5 (C) Procedure.

(1) Application review, public notification and scheduling hearing. The procedures and requirements for submission and review of an application, public notification, and scheduling the public hearing is established in section 19-2.2, common procedures.

(2) Review and action by board of zoning appeals. The board of zoning appeals shall conduct a public hearing on the application pursuant to subsection 19-2.2.18, public hearing procedures. **At the public hearing, the board of zoning appeals shall consider the application, the relevant support materials, the staff report, the report of the technical advisory committee, and the evidence presented at the hearing.** After the close of the public hearing, the board of zoning appeals shall approve, approve with modifications, approve with conditions, or disapprove the application based on the standards in subsection 19-2.3.5(D), standards.

And finally, this Court need only concern itself with the existence, not the weight given to, any evidence that a zoning board considered. "South Carolina Code Section 6-29-840 prescribes the standard of review a circuit court should apply when considering

an appeal from a local zoning board. In pertinent part, the statute provides: "The 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 (Supp. 2003). It is well-settled that "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." *Sterling Dev. Co. v. Collins*, 309 S.C. 237, 240, 421 S.E.2d 402, 404 (1992) (citing *Townes Assocs., Ltd v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976))." *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (2004).

Therefore, unless there is no evidence found in 1) the application for the special exception and the relevant support materials, 2) the staff report, 3) the report of the technical advisory committee, or 4) testimony and exhibits presented at the hearing, the decision of the Board to grant Ms. Stilwell a special exception should not be disturbed by this or any other appellate court.

A brief review of the application (particularly page 2, paragraph 1 under APPLICANT RESPONSE TO SECTION 19-2.3.5(D)(1), STANDARDS-SPECIAL EXCEPTION), the staff report (particularly page 2, bullet point 1), or the transcript of the BZA hearing (particularly page 31, lines 13 -18 wherein a witness named Ken Padgett testifies that he is "a former City Planner" and that "this use is the perfect transitional use for a neighborhood like that," clearly shows that the Board received evidence to support its finding that the proposed special exception is consistent with the comprehensive plan.

A brief review of the application (particularly page 2, paragraph 2 under APPLICANT RESPONSE TO SECTION 19-2.3.5(D)(1), STANDARDS-SPECIAL EXCEPTION), the staff report (particularly page 2, bullet point 2), or the transcript of the BZA hearing (particularly page 10, line 24) clearly shows that the Board received evidence to support its finding that the proposed special exception use will comply with

the use specific standards (i.e. no more than 10 rooms, not within 200 feet of another bed and breakfast or group living facility, and parking in the rear).

A brief review of the application (particularly page 3, paragraph 3 under APPLICANT RESPONSE TO SECTION 19-2.3.5(D)(1), STANDARDS-SPECIAL EXCEPTION), the staff report (particularly page 2, bullet point 3), or the transcript of the BZA hearing (particularly page 31, lines 13 -18 wherein a witness named Ken Padgett testifies that he is "a former City Planner" and that "this use is the perfect transitional use for a neighborhood like that" clearly shows that the Board received evidence to support its finding that the proposed special exception is compatible with the character of surrounding lands.

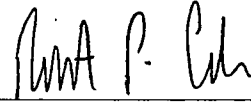
And finally, a brief review the application (particularly page 3, paragraph 4 under APPLICANT RESPONSE TO SECTION 19-2.3.5(D)(1), STANDARDS-SPECIAL EXCEPTION), the staff report (particularly page 2, bullet point 4), or the transcript of the BZA hearing (particularly page 8, line 8 through page 9, line 24) clearly shows that the Board received evidence to support its finding that the proposed use utilizes a design that does not have a substantial adverse impact on surrounding lands.

The preceding four paragraphs merely point out that there is in the record some evidence to support the Board's determination that each of the requisite four standards for a special exception had been met. Again, it is not for this Court to question the wisdom of the Board's decision but rather to simply determine whether or not some evidence exists in the record to support it. Clearly such evidence exists.

CONCLUSION

For the reasons stated, this Court should affirm the decision of the Circuit Court.

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
Trial Court Case No. 2012-CP-23-04676

Appellate Case No. 2013-000786

Garry and Carolyn Coulter,
George and Betsy Zimmerman,
Michael and Michelle Shain, and
Frederick Eugene Jones, Appellants,

v.

City of Greenville Board of Zoning
Appeals and the City of Greenville,
Carol Stilwell, Respondents.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Respondents City of Greenville Board of Zoning Appeals and City of Greenville propose the following to be included in the Record on Appeal:

1. Form Order of the Honorable D. Garrison Hill dated January 9, 2013 (clocked January 10, 2013);
2. Order of the Honorable D. Garrison Hill dated February 19, 2013 approving the grant of a special exception permit by the BZA dated 2/19/13 (clocked February 20, 2013);
3. Form Order of the Honorable D. Garrison Hill denying Plaintiff's Motion to Alter or Amend the Judgment dated March 11, 2013 (clocked March 13, 2013);
4. Amended Summons and Complaint filed July 24, 2012, served on Respondents August 2, 2012;
5. Response and Transcript of Record of City of Greenville and Its Board of Zoning Appeals, September 4, 2012;

6. City of Greenville's Memorandum of Law, November 30, 2012;
7. Transcript of the December 5, 2012 Circuit Court hearing.

I certify that this designation contains no matter which is irrelevant to this appeal.

October 25, 2013



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THE STATE OF SOUTH CAROLINA
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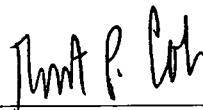
City of Greenville Board of Zoning
Appeals and the City of Greenville,
Carol Stilwell,

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PROOF OF SERVICE

I certify that I have served **the Initial Brief and Designation of Matter to be Included in the Record on Appeal of Respondents City of Greenville Board of Zoning Appeals and the City of Greenville** on Garry and Carolyn Coulter, George and Betsy Zimmerman, Michael and Michelle Shain, Frederick Eugene Jones and Carol Stilwell by depositing a copy of same in the United States Mail, postage prepaid, on October 25, 2013, addressed to their attorneys of record, R. Mills Ariail, Jr., Law Office of R. Mills Ariail, Jr., 11 North Irvine Street, Greenville, SC 29601 and John Patrick Riordan, Smith Moore Leatherwood, LLP, 300 East McBee Ave., Ste. 500, Greenville, SC 29601.

October 25, 2013



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