

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

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SC Court of Appeals

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 RESPONDENT STILWELL

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STATEMENT OF ISSUES ON APPEAL

- I. SHOULD THIS COURT REVERSE A CIRCUIT COURT ORDER UPHOLDING A BOARD OF ZONING APPEALS DECISION, WHEN THE BOARD'S FINDINGS AND CONCLUSIONS AS WELL AS A WRITTEN TRANSCRIPT OF RECORD ESTABLISH ADEQUATE BASIS FOR THE BOARD'S DECISION?
- II. SHOULD THIS COURT REVERSE THE CIRCUIT COURT ORDER UPHOLDING A BOARD OF ZONING APPEALS DECISION ON A BASIS THAT THE APPLICANT FOR A SPECIAL EXCEPTION FAILED TO GIVE ORAL TESTIMONY ON A PARTICULAR ISSUE WHEN THE OWNER'S APPLICATION, THE STAFF REPORT AND STATEMENTS AS WELL AS THE STAFF'S REPORT ADDRESS THE RELEVANT ISSUES?
- III. SHOULD THIS COURT REVERSE THE CIRCUIT COURT ORDER UPHOLDING A BOARD OF ZONING APPEALS DECISION ON THE GROUNDS THAT OPPONENTS WERE UNDULY LIMITED IN THEIR TIME TO PRESENT, WHEN THE OPPONENTS STATED THEY COULD MEET THE TIME ALLOTTED AND THE BOARD IN FACT ALLOWED ADDITIONAL TIME?
- IV. FINDING AMPLE SUPPORT IN THE RECORD, THE CIRCUIT COURT'S AFFIRMATION OF THE BZA GRANT OF A SPECIAL EXCEPTION WAS NOT AN ABUSE OF DISCRETION.

STATEMENT OF THE CASE

This is a zoning matter. As part of the administrative mechanism designed to enforce zoning ordinances under the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, zoning ordinances may provide for the creation of a board to be known as the board of zoning appeals (BZA). S. C. Code Ann. §6-29-780(A) (2004).

The BZA is granted the power "to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance" S. C. Code Ann. §6-29-800(3) (Supp. 2012).

Dr. Carol Cline Stilwell (Respondent Stilwell) was granted a special exception by the City of Greenville BZA to operate a Bed & Breakfast in her home. Appellants protest the grant.

Respondent 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 of Ordinances (“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, Code.

On May 21, 2012, Respondent 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 presented a staff report for the BZA. The BZA possesses the sole authority “to permit uses by special exception subject to the terms and conditions of the uses set forth for such uses in the zoning ordinance.” S.C. Code §6-29-800(A)(3) (Supp. 2012). In the instant case, applying the criteria for issuing a special exception, Planning and Zoning staff members concluded that Respondent Stilwell’s application complied with the standards for granting a special exception and they reported the same to the BZA. (City of Greenville Staff Report for Special Exception).

On June 21, 2012, the BZA held a hearing on Respondent Stilwell’s request for a special exception to operate a bed and breakfast inn in an R-6 district. The BZA initially heard from the staff as it outlined the character of the application, then Respondent Stilwell presented her case. (BZA Tr. pp. 7-15). When Respondent Stilwell concluded, the Board invited those opposed to

the application to speak. The Chairman 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 chairman 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..." (BZA Tr. p. 16, l. 1). Appellant Coulter asserted two reasons that the Board should deny Respondent Stilwell's application. He said he did "not agree with the staff report as far as its impact to the community" (BZA Tr. p. 17, l. 24) and he did not "think it conforms to the Historic Comprehensive Plan for Augusta Road." (BZA Tr. p. 17, l. 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." (BZA Tr. p. 21, l. 22). Appellant Coulter thereafter yielded the floor to Mary Allison Zimmerman. Ms. Zimmerman read a letter prepared by her father, Appellant George Zimmerman. 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." (BZA Tr. p. 24, l. 3 – p. 26, l. 17). 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 (BZA Tr. p. 27, ll. 14-18).

Three supporters of Respondent Stilwell's application presented testimony to the Board. Ken Padgett, who described himself as the neighbor to the right of Respondent Stilwell's property, said "if you sit on our rear porch, Carol's – Dr. Cline's – visitor parking is within 20

feet of our rear porch” (BZA Tr. p. 29, ll. 6-8). 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” (BZA Tr. p. 29, ll. 8-10). He went on to refute the opposition’s complaint about parking issues and public nuisances. He also addressed the concern that Respondent 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.” (BZA Tr. p. 30, ll. 22-24). Most notably Mr. Padgett went on to testify that he is the former City Planner for the City of Greenville and that “the reason we’ve got that Special Exemption in the ordinance is just for this situation. It is the perfect transitional use for a neighborhood like that. The home is perfectly situated for it” (BZA Tr. p. 31, ll.15-19).

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 (BZA Tr. p. 48, ll. 20-52).

On June 25, 2012, the BZA, by and through the City’s Zoning Administrator, issued it decision approving Respondent Stilwell’s application for a special exception to operate a bed and breakfast at her home. On July 23, 2012, Appellants filed a timely notice of appeal with the Greenville County Court of Common Pleas.

On December 5, 2012, Appellants’ 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 Respondent Stilwell a special exception. Appellants filed a timely Motion to Alter or Amend Judgment on March 4, 2103. Judge Hill denied Appellants’

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

Respondent Stilwell herein adopts by reference the Brief of her co-Respondent with the City of Greenville.

ARGUMENTS

I. THE TRIAL COURT PROPERLY FOUND THE BZA DECISION TO BE ADEQUATELY SUPPORTED BY THE REQUISITE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Appellants correctly assert 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...”

Nonetheless, Appellants argue that 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.”

Appellants’ argument is unfounded. The BZA 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 states: “**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.” (BZA Decision)

Appellants continue to maintain that further explanation is necessary. However, in response to such argument at the Circuit Court level, extensive explanation was provided and excerpts of the record noted. (Circuit Court Tr. p. 12-41). “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).

In moving to approve the special exception and note the BZA’s findings, Board member Sherard states “[t]he use will comply with the Specific Use Standards.” (BZA Tr. p. 49, l.1) Such finding was fully supported, as found in the Court Order Approving the BZA Grant. (Court Order, specifically pp. 5-6 with relation to this argument).

II. THE TRIAL COURT PROPERLY FOUND THE BZA DECISION TO BE ADEQUATELY SUPPORTED BY THE REQUISITE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN COMPLIANCE WITH THE CITY CODE.

Appellants second argument, though seemingly included within the first, focuses particularly upon that Use Specific Standard prohibiting the operation of a Bed & Breakfast Inn within 200 feet from another Bed & Breakfast or “group living facility,” suggesting Respondent Stilwell “failed to present *any* testimony or other evidence” in that regard. Appellants thereafter seek to dispute the significance of the application, pre-hearing discussions, the staff report, etc., suggesting reliance upon the same violates both the letter and spirit of the law. To the contrary,

Appellants' narrow desire that fundamental, established findings be specifically, formulaically and needlessly raised during the public hearing WOULD violate such precepts. The entire theme of the opposition to Respondent Stilwell's application was fear of "opening Pandora's box" by allowing the FIRST Bed & Breakfast in this area. Were these base standards not met, no hearing would have been held given the expected rejection of the initial application. Instead, the application specifies that "it will not be within 200 ft. of another similar facility," and when pre-hearing concerns were raised by Appellant Coulter with regard to the nearby Westminster Retirement Center, the City cogently explained that it was not a "group living facility," but an "institution." (Ryhs Kear's June 19, 2012 e-mail).

Such considerations are in accord with both with the spirit and the letter of the law, which states: "[a]t 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." §19-2.3.5 (C)(2) Code. Accordingly, ample evidence existed to support the BZA decision and affirmation by the Circuit Court.

III. APPELLANTS HAVING BEEN AFFORDED AMPLE OPPORTUNITY TO SPEAK AT THE BZA HEARING, THE CIRCUIT COURT PROPERLY UPHELD THE BZA GRANT OF A SPECIAL EXCEPTION

Though Appellants assert they were denied a meaningful opportunity to speak at the public hearing, the record shows otherwise. The procedures for the BZA 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.

Appellants apparently acknowledge that the notice required by this section of the City Code was properly given, a fact adequately supported in the record. (See mailing list Newspaper Notice, Affidavit of Carol Stillwell and BZA Minutes of June 21, 2102 Regular Meeting). 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).

Appellants complain that the 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.” Appellants go on to complain that “[a]lthough Mr. Coulter and Ms. Zimmerman were able to speak briefly at the hearing, they were

not planned group representatives” and “[d]uring 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.” However, Appellant Coulter’s own statements at the public hearing are inapposite what Appellants’ now assert. When the Chairwoman of the Board was discussing the allocation of two minutes of time to each side (opponents and supporters of the application), Appellant Coulter interjected “Madame, that’ll work on the opposition side, and we’re prepared to just do it as a group and come in under time.” (BZA Tr., p. 16, ll. 1-4). How can Appellants now complain about time restrictions given this initial comment? Appellant Coulter thereafter gave a statement in opposition before questioning and interacting with the Board (BZA Tr., p. 16-22). Appellant Coulter went on speak for several other pages in the transcript, stating “[t]he only other thing I wanted to add” before relating his original complaint. (BZA Tr. p. 21, l. 22 – p. 22, l.14). He then indicated, without reference from the BZA as to time constraints “I’m going to turn it over to one of the other neighbors right now” (BZA Tr. p. 22, ll. 13-14). No one cut him off or prevented him from presenting any other information he wished to present. Nowhere does he protest that there were other concerns that he wished to express, or other persons who wished to speak. Why does he now complain about needing more time? The other speaker, Appellant George Zimmerman’s daughter, Mary Allison Zimmerman, merely read a letter from her father into the record. Review of the transcript reveals she was allowed to read the entire letter, presumably stating all she desired, was never interrupted by any Board member and finished her presentation by thanking the Board for their time. (BZA Tr. p. 23, l. 3 – p. 26, l. 17). Finally, Appellants Mike Shain and Freddy Jones, along with Jerri Westmoreland were recognized as being in opposition to the exception

(BZA Tr. p. 26, l. 24 – p. 27, l. 2), before Appellant Coulter, without further complaint, made a final plea for the BZA to “make the right decision.” (BZA Tr. p. 27, ll.14-18)

As noted in the Court Order, “the transcript reveals Mr. Coulter consented to the manner in which the hearing was conducted. . . . At the conclusion of Dr. Stilwell’s presentation, Mr. Coulter did not indicate he had further remarks and was not prevented by anyone from offering any additional comments . . . The conduct of the hearing complied with the Greenville City Code” (Order, pp. 3-4). Appellants offer no meaningful argument in opposition.

With regard to the “negative impact on surrounding property values,” even assuming the applicability of the *Newton* case, Appellants failed to persuasively oppose the findings of the BZA during the “first-level appeal.” As noted by the Court, Appellants “concede in their Brief that the BZA made specific findings of fact and conclusions of law in all other areas” by stating “the BZA makes findings of fact and conclusions of law for all other areas but fails to do so for the use specific standards.” (Court Order, p. 6, referencing Memorandum of Law in Support of Plaintiff’s Complaint, p. 3). More importantly, the BZA Decision specifically makes such findings and the testimony of Dr. Stilwell, Mr. and Mrs. Padgett and Mrs. Wilkinson adequately support the BZA Decision.

IV. FINDING AMPLE SUPPORT IN THE RECORD, THE CIRCUIT COURT’S AFFIRMATION OF THE BZA GRANT OF A SPECIAL EXCEPTION WAS NOT AN ABUSE OF DISCRETION

Appellants assert an abuse of discretion by either the BZA and/or the Circuit Court, suggesting that the grant and affirmance of the special exception was unsupported by the evidence or controlled by an error of law. Appellants’ assertion is unpersuasive.

“Under S. C. Code Ann. § 6-29-840(A) (Supp. 2005), “[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.” A court will refrain from substituting its judgment for that of the

reviewing body, even if it disagrees with the decision. *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).” *Clear Channel Outdoor v City of Myrtle Beach*, 372 S.C. 230, 642 S.E.2d 565 (2007).

“[A local zoning board’s] construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefore.” *Id.* at 568, citing *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953).

“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 §6-29-840 (Supp. 2012).

It is solely for the Board of Zoning Appeals to determine whether the applicant for a special exception has demonstrated that the use meets the four above enumerated conditions. “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 § 6-29-840 (Supp. 2012). Furthermore, the factual findings of the BZA must be affirmed by the Circuit Court if they are supported by any evidence and not influenced by an error of law. *Stanton v. Town of Pawleys Island*, 317 S.C. 498, 455 S.E.2d 171 (1995).

Describing it as “an extremely narrow standard of review,” the Court of Appeals has declared that “the local zoning boards, and not the courts, are the primary entities responsible for the planning and development of our communities.” *Helker v. Zoning Bd. App. for the City of Beaufort*, 346 S.C. 401, 412, 553 S.E.2d 42, 48 (Ct. App. 2001). Later affirmed by the Supreme Court, the Court of Appeals in *Clear Channel Outdoors v. The City of Myrtle Beach*, reversed the circuit court for misapplying the standard of appellate review and “substituting its judgment

for that of the Board,” setting forth at length the legal principles establishing the appellate standard of review:

Courts are bound to afford substantial deference to the decisions of those charged with interpreting and applying local zoning ordinances. *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953) (“[T]his construction of its own ordinance, the enforcement of which it is charged with, should be given some consideration and not overruled without cogent reason therefore.”). “The circuit court should not disturb the findings of the board unless the board has acted arbitrarily or in an obvious abuse of discretion, or unless the board has acted illegally or in excess of its lawfully delegated authority.” *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987). As a consequence, a court must “refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.” *Peterson Outdoor Adver. v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997).

To this end, a court will uphold the decisions of a reviewing body if there is any evidence in the record to support its decision. *See Historic Charleston Found. v. Krawcheck*, 313 S.C. 500, 505-06, 443 S.E.2d 401, 405 (Ct.App.1994) (stating an appellate court should not reverse the circuit court's affirmance of a Board unless the Board's findings of fact have no evidentiary support or the Board commits an error of law).

Clear Channel Outdoors, 360 S.C. 459, 465-467, 602 S.E.2d 76, 79 (Ct. App. 2004).

As previously discussed, pursuant to the Greenville City Code of Ordinances, the Greenville BZA 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 are 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.

This Court need only concern itself with the existence, not the weight given to, any evidence that a zoning board considered. 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 BZA to grant Respondent Stilwell a special exception should not be disturbed by this or any other appellate court.

A brief review of the application (particularly p. 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 p. 31, ll. 13 -18) wherein a witness named Ken Padgett testified as “a former City Planner” that “this use is the perfect transitional use for a neighborhood like that” exemplify evidence presented to the BZA in support of its finding that the proposed special exception is consistent with the comprehensive plan.

A brief review of the application (particularly p. 2, paragraph 2 under APPLICANT RESPONSE TO SECTION 19-2.3.5(D)(1), STANDARDS-SPECIAL EXCEPTION), the staff report (particularly p. 2, bullet point 2), or the transcript of the BZA hearing (particularly p. 10, l. 24) exemplify evidence presented to the BZA in support of its finding that the proposed special exception 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 p. 3, paragraph 3 under APPLICANT RESPONSE TO SECTION 19-2.3.5(D)(1), STANDARDS-SPECIAL EXCEPTION), the staff report (particularly p. 2, bullet point 3), or the transcript of the BZA hearing (particularly p. 31, ll. 13 -18) wherein a witness named Ken Padgett testified as “a former City Planner” that “this use is the perfect transitional use for a neighborhood like that” exemplify evidence presented to the BZA in support of its finding that the proposed special exception is compatible with the character of surrounding lands.

And finally, a brief review the application (particularly p. 3, paragraph 4 under APPLICANT RESPONSE TO SECTION 19-2.3.5(D)(1), STANDARDS-SPECIAL EXCEPTION), the staff report (particularly p. 2, bullet point 4), or the transcript of the BZA

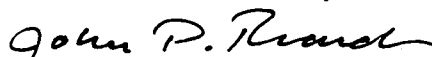
hearing (particularly p. 8, l. 8 – p. 9, l. 24) exemplify evidence presented to the BZA in support of its finding that the proposed special exception utilizes a design that does not have a substantial adverse impact on surrounding lands.

The preceding four paragraphs merely emphasize that there exists in the record some evidence to support the BZA's determination with regard to each of the requisite four standards for a special exception. It is not for this or any Court to question the wisdom of the BZA's decision, but rather to simply determine whether or not some supportive evidence exists in the record. Finding ample support in the record, the Circuit Court's Order approving the grant of the special exception was not an abuse of discretion and should be affirmed.

CONCLUSION

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

Respectfully submitted,



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October 25, 2013

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.

**DESIGNATION OF MATTERS TO BE
INCLUDED IN THE RECORD ON APPEAL**

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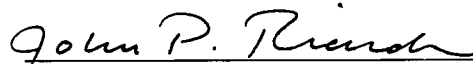
SC Court of Appeals

Respondent, Carol Stilwell, proposes that the following be included in the Record on Appeal, in addition to all matters proposed by Appellant and other Respondents.

1. Application for a Special Exception by Carol Stilwell
2. Decision of the Board of Zoning Appeals, Application S12-124
3. Staff Report for Special Exception, application S12-124
4. Minutes of the June 21, 2012 regular meeting of the City of Greenville BZA
5. Map showing the application property
6. Various e-mails to and from Staff regarding application S12-124
7. Affidavit by Carol Stilwell
8. Mailing List
9. Publication Document
10. Transcript of the June, 2012 BZA Hearing (prepared by Carlene Campbell)
11. Transcript of the December 5, 2012 Circuit Court hearing
12. Judge Hill's Order Affirming the grant of a special exception by the BZA dated 1/9/13
13. Judge Hill's Order approving the grant of a special exception by the BZA dated 2/19/13 (clocked on 2/20/13)
14. Judge Hill's Order denying Plaintiff's Motion to Alter or Amend the Judgment dated 3/11/13 (clocked 3/13/13)
15. Audio recording of the June, 2012 BZA hearing.
16. Memorandum of Law in Support of Plaintiffs' Complaint (Appeal from BZA Final Decision)(p.3)

I certify that this Designation contains no matters which are irrelevant to this appeal.

Respectfully submitted,



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October 24, 2013

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SC Court of Appeals

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas**

The Honorable D. Garrison Hill, Circuit Court Judge

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, City of Greenville,
and Carol Stilwell,**

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that the Initial Brief of Respondent Stilwell and Designation of Matters to be Included in the Record on Appeal were served upon counsel of record this 25th day of October, 2013, by placing the same in the United States Postal Service with proper, first-class postage affixed and addressed as follows:

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