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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS
THE HONORABLE BENTLEY PRICE, CIRCUIT COURT JUDGE

Appellate Case No. 2024-000134
Civil Action No. 2023-CP-10-01493
Unpublished Opinion No. 2026-UP-078 (S.C. Ct. App. filed February 18, 2026)

Town of Sullivan's Island, South Carolina;
Town of Sullivan's Island Board of Zoning Appeals;
and Charles Drayton, in his official capacity as Zoning Administrator,

Petitioners,

v.

Pacaso, Inc. and 2 SC Lighthouse, LLC,

Respondents.

RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

The Petition for Writ of Certiorari filed by the Town of Sullivan’s Island, its Board of Zoning Appeals, and its Zoning Administrator (collectively, the “Town”) should be denied.

The Town asks this Court to grant the extraordinary writ of certiorari to review an *unpublished* decision of the Court of Appeals that has no precedential value, that announces no new rule of law, and that resolved a unique, one-off dispute between these two parties under settled South Carolina law. The Court of Appeals reversed and held what Respondents have maintained from the beginning: the home at 3115 I’On Avenue is not a “Vacation Rental” as the Town’s own ordinance defines that term. That holding turned on the construction of an ordinance, a question of law, amidst largely undisputed facts. And the panel got it right.

Certiorari “is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. The Town identifies none. Of the five considerations the Rule lists, the Town can satisfy only one, the mere presence of a dissent. However, a dissent alone does not warrant this Court’s review. The decision conflicts with no decision of this Court. It presents no novel question of law. To the contrary, the Town admits the governing standard is “settled.” (Pet. at 2.) And the panel’s decision to issue its opinion as unpublished confirms that the case broke no new ground.

The petition is, at bottom, a request that this Court second-guess the panel’s interpretation of a single ordinance, unique to the Town, as applied to a single property. That is error correction, not certiorari. The “Vacation Rental” ordinance was written to reach the familiar vacation rental: a home offered to the public for short stays in return for money. This case is the opposite. No one pays to stay at the Property, and the owners’ own policies forbid renting it to the public. The Zoning Administrator and the Board, under intense political pressure to drive Respondents out of

town, tried to force this co-owned home into a definition it does not fit. The Court of Appeals correctly refused to let them. The petition should be denied.

COUNTER-STATEMENT OF THE CASE

On October 21, 2022, the Town’s Zoning Administrator issued a letter opining that the Property, located at 3115 I’On Avenue and base-zoned RS-Single Family Residential, was operating as an illegal “Vacation Rental.” (R. pp. 407-415.) Respondents timely appealed that determination to the Town’s Board of Zoning Appeals (the “BZA”).

On February 9, 2023, the BZA voted to uphold the Zoning Administrator and deny the appeal, finding the Property fell within the definition of “Vacation Rental” in Section 21-203 of the Zoning Ordinance and also violated the RS-District provisions in Sections 21-19 and 21-20. (R. p. 97; R. p. 1.) Respondents appealed to the Circuit Court under S.C. Code Ann. § 6-29-820.

While that appeal was pending, Respondents obtained through a Freedom of Information Act request a June 9, 2022 email in which the Zoning Administrator admitted the Property fell outside the definition of “Vacation Rental.” The Town failed to include that email in the certified record before the BZA or the Circuit Court. Respondents moved to supplement the record to add it. (R. pp. 420-460.) The Circuit Court affirmed the BZA and denied the motion to supplement as moot. (R. pp. 8-12.)

Respondents appealed. On February 18, 2026, a divided panel of the Court of Appeals reversed in Unpublished Opinion No. 2026-UP-078. Chief Judge Williams, joined by Judge Curtis, held that the determination whether the Property is a “Vacation Rental” is a question of law reviewed de novo; that the Pacaso program does not constitute a Vacation Rental; and that the BZA lacked appellate jurisdiction to reach the RS-District provisions the Zoning Administrator had never addressed. Judge Thomas dissented. The Town petitioned for rehearing and rehearing

en banc. On May 12, 2026, the panel denied rehearing and the court denied the petition for rehearing en banc. The Town served this petition on June 11, 2026.

COUNTER-STATEMENT OF THE FACTS

This case has never been about a genuine short-term rental. The Town banned “Vacation Rentals” more than two decades ago, and Respondents do not challenge the Town’s authority to prohibit the rental of homes to the public for stays of fewer than twenty-eight days in return for money. This case is about something the ordinance does not reach, namely, how the co-owners of a single home agree among themselves to share the use of property they own together.

A. The Property is owned by an LLC whose members co-own the home, and it is not rented to the public.

2 SC Lighthouse, LLC is the fee simple owner of the Property, which it acquired on April 7, 2022. (R. p. 161.) It is a limited liability company. Its members, in the words of the Pacaso materials in the record, “co-own and control 100%” of the home through “a property-specific LLC,” and “Pacaso retains no ownership in the home, acting solely as a property manager after sale.” (R. p. 139; R. p. 150.) Membership is capped at eight. (R. p. 137; R. p. 139.) Owning residential real estate through an LLC, a trust, or a tenancy in common is common on Sullivan’s Island and throughout South Carolina, and the co-owners of such homes routinely visit for stays of fewer than twenty-eight days at a time by agreement among themselves.

The home may not be rented to the public. The owner policies in the record include “[n]o rental of the property” and “[n]o commercial use of the home,” and they “restrict noise and prohibit short-term rentals.” (R. p. 141; R. p. 150.) Use is “[l]imited to owners and guests”: “The only people who may use the home are owners and a limited number of their guests.” (R. p. 147.) Violations “may result in monetary penalties or a temporary suspension of stay rights.” (R. p. 147.)

The Property is not advertised or marketed to the public on any rental platform, and the record contains no evidence of a single rental transaction with any member of the public.

B. No money changes hands in return for any stay at the Property.

Owner contracts with Pacaso, Inc. “as a full-service property manager to reduce the hassle of second home ownership.” (R. p. 139.) “Pacaso retains no ownership in the home, acting solely as a property manager after sale.” (R. p. 139.) Pacaso’s management services include cleaning, landscaping, interior design, home and pool maintenance, and home policies and enforcement. (R. p. 142.) Those services are paid for through the co-owners’ monthly operating expenses, and the cleaning charges within them “do not vary based on the duration of stay.” (R. p. 62.)

The co-owners have agreed among themselves to let Pacaso administer an equitable framework for sharing the home, no different from co-owners of a family beach house agreeing how to divide its use. The management agreement provides that “Owners have engaged Manager to, among other things, coordinate fair and equitable usage of the Home amongst the Owners.” (R. p. 60.) That same agreement states that neither it “nor the Operating Agreement, nor the ownership of a Property Interest, constitutes an arrangement, plan, or similar device where Owners receive ownership rights in, or the right to use, occupy or possess, the Home on a periodically recurring basis for a specific or discernible period of time during any given year.” (R. p. 60.) Stays are scheduled through Pacaso’s app and its “SmartStay” scheduling system. (R. p. 61.) The maximum length of a stay depends on the number of shares owned, and an owner of a single share may book a stay of two to fourteen nights. (R. p. 171.) Members pay Pacaso a flat “\$99/month monthly program management fee,” which is “separate from” the monthly operating expenses and does not vary with the duration of any stay. (R. p. 62.) No co-owner pays a nightly or weekly rate, and no

co-owner pays anything in return for any particular stay. The owners do not pay to stay at a home they own.

C. The Zoning Administrator admitted in writing the Property is not a short-term rental, then set out to “eliminate” a lawful use.

Soon after Owner acquired the Property, a neighbor emailed the Zoning Administrator, asking him to identify “who on staff can prosecute these people for violations and stop this from happening.” (R. p. 429; *see* R. p. 422.) The Zoning Administrator, Charles Drayton, responded the same day. (R. p. 428.) His email is candid:

This is certainly a concern that we are working to find the appropriate way to address, and by address, I mean eliminate. . . . [T]his occupancy structure does not fall into the category of a STR, since there is no rental contract or similar mechanism to provide for the property’s use. Our legal team is working on a couple of strategies to block this circumvention [O]ppositional signage on adjacent properties and other activities . . . will and do discourage potential buyers, who do not want to manifest their “vacation home” in a hostile environment, [and] will keep Pacaso from wanting to buy future properties on the island if they can’t sell their shares.

The admission is dispositive. The definition of “Vacation Rental” requires that a stay of fewer than twenty-eight days be “in return for valuable consideration.” The Zoning Administrator recognized there is no such quid pro quo here, because “there is no rental contract or similar mechanism.” That has been Respondents’ position throughout. Yet the same official who admitted the use was lawful announced his intent to “eliminate” it and encouraged an “oppositional signage” campaign to create a “hostile environment” and drive the owners off the Island.

That campaign bore fruit. Opposition materials circulated on the Island urged residents to obtain yard signs opposing the Property, signs “which are now popping up all over the island,” in the hope that any “potential buyer of 3115 I’On would be greeted with a forest of such signs.” (R. pp. 87-89.) At the BZA hearing, six members of the public, including the complaining neighbor, spoke against Respondents. (R. p. 113.)

The Town never included the Zoning Administrator's admission in the certified record. Respondents had to uncover it through a FOIA request, and when they moved to place it before the circuit court, the motion was denied as moot. The Court of Appeals reviewed the record the Town assembled and concluded, correctly and as the Zoning Administrator himself originally determined, that the Property is not a Vacation Rental.

STANDARD GOVERNING CERTIORARI

“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. The Rule lists five considerations that, “while neither controlling nor fully measuring the Supreme Court’s discretion or power to grant review in general, indicate the character of reasons which will be considered”: (1) novel questions of law; (2) a dissent in the decision of the Court of Appeals; (3) conflict with a prior decision of this Court; (4) substantial constitutional issues directly involved; and (5) a federal question on which the Court of Appeals conflicts with a decision of the United States Supreme Court. Rule 242(b)(1)-(5), SCACR.

Two features of the Rule frame this petition. First, consideration (3) is satisfied only by conflict with a decision of *this Court*, not with a decision of the Court of Appeals. Second, the decision the Town asks this Court to review is unpublished. “Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.” Rule 268(d)(2), SCACR. The opinion itself bears the standard legend that it “HAS NO PRECEDENTIAL VALUE.”

ARGUMENT

I. The petition identifies no “special and important” reason for certiorari under Rule 242(b).

The Town frames its petition as presenting a “question of recurring and statewide importance.” (Pet. at 1.) It does no such thing. The standard of review in zoning appeals is settled law, and nothing in the Court of Appeals’ decision suggests otherwise. Measured against Rule 242(b), SCACR, the petition satisfies no consideration that would justify this Court’s discretionary review.

A. The decision is unpublished, makes no law, and creates no statewide conflict.

The panel issued its decision as an unpublished opinion that, by rule, “ha[s] no precedential value.” Rule 268(d)(2), SCACR. It binds no one but these parties, and it announces no rule that any other zoning board, circuit court, or panel must follow. It therefore cannot “hollow out” Section 6-29-840(A), as the Town fears. (Pet. at 8.) It cannot unsettle the standard of review for any future case, and it cannot generate the kind of statewide conflict the certiorari power exists to resolve.

Had the Court of Appeals believed it was deciding a recurring question of statewide consequence, it would have published its opinion. The panel’s decision not to publish reflects a straightforward application of settled law to a particular record. Granting certiorari under these circumstances would amount to nothing more than single-case error correction, which is not the function of the writ.

B. A dissent, standing alone, does not warrant review.

The only Rule 242(b) consideration the Town can claim is the existence of a dissent. Respondents do not dispute that Judge Thomas dissented. But a dissent is, by the Rule’s own terms,

“neither controlling nor fully measuring” this Court’s discretion. Rule 242(b), SCACR. Panels often divide, and this Court regularly denies certiorari for unpublished opinions that carry a dissent.

The dissent here identifies no unsettled or novel rule of law. The meaning of “Vacation Rental” is not in doubt. The dissent would simply have read the definition more broadly, to reach an arrangement the majority correctly held it does not cover. A single judge’s disagreement with the panel’s interpretation of one ordinance, as applied to one property, is not a question of statewide importance, and it is not a reason for this Court’s review.

C. The decision conflicts with no decision of this Court.

Consideration (3) requires conflict with a prior decision of *this Court*. The only decision of this Court the Town invokes as a conflict is *Stanton v. Town of Pawleys Island*, 317 S.C. 498, 455 S.E.2d 171 (1995), and the panel did not conflict with it. *Stanton* concerned whether the lower level of a beach house was a separate “use.” This Court reversed, holding that the building inspector and board “erred, as a matter of law, in severing the lower level . . . from the entire structure,” even though a board’s factual findings are otherwise entitled to deference. *Id.* at 503, 455 S.E.2d at 173.

The panel did the same thing here. It held that “the circuit court erred in affirming the BZA’s determination as a factual finding,” and that “the BZA improperly construed the Zoning Ordinance.” (Op. at 2, 4.) *Stanton* models the panel’s approach. It does not condemn it.

Nor is there any conflict between the panel’s decision and the Town’s remaining authorities. *Heilker*, *Furr*, and *Boehm* stand with *Stanton* for a single, settled proposition: a zoning board’s findings of fact are entitled to great deference, while its construction of an ordinance presents a question of law that an appellate court reviews de novo under a broader standard. *Heilker* supplies the first half of that rule, holding that “[a] determination by a zoning board that a particular

purpose or activity does or does not constitute a ‘use’ is a finding of fact.” *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 412, 552 S.E.2d 42, 48 (Ct. App. 2001). *Boehm* supplies the second, holding that “[i]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Boehm v. Town of Sullivan’s Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018).

Furr applies that same framework, and it proves the point. The Horry County ordinances there “[did] not specifically permit or prohibit a hospice,” so the board had to decide whether a proposed hospice facility was more comparable to a permitted nursing home or a prohibited hospital. That, the Court of Appeals held, “required a factual inquiry,” and the circuit court therefore “should have given deference to the Board’s decision because its decision was based upon appropriate findings of fact which are supported by the record.” *Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 185, 767 S.E.2d 221, 225 (Ct. App. 2014). *Furr* recited the settled standard, quoting this Court, that “the court must determine only whether the decision of the board is correct as a matter of law.” *Id.* at 184, 767 S.E.2d at 224.

The distinction is the one this case turns on. *Furr* deferred because the ordinance did not define the use at issue, so the board’s answer “required a factual inquiry.” *Id.* at 185, 767 S.E.2d at 225. Here the ordinance *does* define the use at issue, and the material facts are undisputed, so the only question left is what the defined term means. The Court of Appeals applied precisely the framework *Heilker*, *Furr*, and *Boehm* describe. Its decision is consistent with those decisions, not in conflict with them.

Even if the panel’s decision could be read to conflict with *Heilker*, *Furr*, or *Boehm*, that would not advance the Town’s petition. Each of those decisions is a decision of the Court of

Appeals. Consideration (3) asks whether “the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.” Rule 242(b)(3), SCACR. A conflict between two decisions of the Court of Appeals is not a conflict with a prior decision of this Court, and it does not satisfy the Rule. In any event, an unpublished opinion does not “conflict” with published authority in any operative sense, because it states no competing rule.

II. The Court of Appeals correctly held that the meaning and reach of “Vacation Rental” is a question of law, and that the Board committed legal error (Question I).

The Town asserts that the determination whether the Property is a “Vacation Rental” is a “finding of fact” entitled to deference under Section 6-29-840(A). It is not. The material facts are not in dispute. No one disputes how the home is owned, how the co-owners share it, or that the co-owners pay nothing in return for any stay.

The only question is whether those undisputed facts fall within the ordinance’s defined term “Vacation Rental.” Construing the reach of a defined term, and applying it to undisputed facts, is a question of law – not fact. “Issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Boehm*, 423 S.C. at 184, 813 S.E.2d at 881; *accord Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 9-10, 776 S.E.2d 753, 757-58 (Ct. App. 2015) (holding that the zoning administrator and board “made a legal conclusion” in construing the ordinance). The panel said as much. It held that “the circuit court erred in affirming the BZA’s determination as a factual finding,” and that “the BZA improperly construed the Zoning Ordinance” by treating this co-ownership arrangement as a prohibited vacation rental. (Op. at 2, 4.) The question the panel decided was one of law, not a finding of fact.

The Town’s contrary authority does not fit this case. The Town leans on the rule that “a determination by a zoning board that a particular purpose or activity does or does not constitute a

‘use’ is a finding of fact.” *Heilker*, 346 S.C. at 412, 552 S.E.2d at 48. But *Heilker* answered a different question. It asked whether a furniture retailer’s outdoor display of indoor merchandise amounted to a separate, nonconforming “use” of the property at all, and it held that the “outdoor display of indoor merchandise was not a nonconforming ‘use,’” because the display was merely an activity incidental to the retail business. *Id.* *Stanton* likewise reversed a zoning board that had treated the lower level of a beach house as a separate “use.” *Stanton*, 317 S.C. at 503, 455 S.E.2d at 173. Those are use-characterization cases. Here, no one disputes that the Property is being used, or that it is used as a residence. The question is not whether some activity counts as a “use,” but whether the Property’s undisputed residential use falls within the ordinance’s definition of the prohibited term “Vacation Rental.” That is ordinance construction, a question of law, as the panel correctly held.

Section 6-29-840(A) commands deference to a board’s *findings of fact*. It does not convert the construction of an ordinance into a fact question immune from review, and it does not insulate a legal error from correction. Even under the deferential standard the Town invokes, a board’s decision will be set aside when it has “no reasonable relation to a lawful purpose” or is controlled by an error of law. *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999); *see also Stanton*, 317 S.C. at 503, 455 S.E.2d at 173 (reversing zoning board for legal error). The panel applied exactly that principle. The ordinance’s meaning is plain, the error was legal, and the petition presents nothing novel for this Court to resolve.

III. The Town misread a clear ordinance, and its “misapprehension” argument simply repackages that legal error (Question II).

The Town’s second question asks this Court to find that the panel “misapprehended th[e] record.” (Pet. at 1.) It did not. The “Vacation Rental” ordinance is clearly drafted to capture the familiar vacation rental: the commercial use of a home offered to the public for short stays in return

for money. The Property is the opposite, and the panel correctly said so. The Town's effort to recast the panel's legal interpretation as a factual "misapprehension" does not make it one.

A. No "valuable consideration" is paid in return for any stay.

A "Vacation Rental" is a structure "made available for use . . . in return for valuable consideration for any period of less than twenty-eight (28) continuous days duration." Section 21-203. The record establishes that the co-owners pay nothing in return for any stay. The monthly operating expenses cover cleaning, landscaping, and maintenance, and the cleaning charges "do not vary based on the duration of stay." (R. p. 62.) The \$99 monthly program management fee is a flat charge, "separate from" those operating expenses, and it is not paid in return for any use or stay. (R. p. 62.) The Town recasts the \$99 fee as the "price of admission" to the booking system. (Pet. at 9.) But a co-owner pays that fee whether or not he ever stays, and pays nothing further when he does. A recurring charge a co-owner pays regardless of use is not "valuable consideration" given "in return for" a short-term stay.

The panel correctly so held, as did the Zoning Administrator before he reversed course under intense political pressure to do so. The Town brands this a "no pay, no stay" arrangement. (Pet. at 8.) That label does not fit the ordinance. The \$99 is a flat monthly charge, owed whether a member books a two-week stay or never visits at all. A fee that does not vary with, and is not paid in return for, any particular stay is not "valuable consideration" for "any period of less than twenty-eight (28) continuous days." Section 21-203. By the Town's reasoning, the periodic dues a homeowners' association collects, on pain of losing access to the community, would turn every owner into a short-term renter. The ordinance asks whether money is paid in return for a stay of fewer than twenty-eight days. Here, the answer is a resounding "no."

B. The home is not rented to the public, and the owner policies forbid it.

The Town faults the panel for noting the absence of “rental advertisements or contracts” and of any “persons other than the co-owners and their guests using the Property.” (Op. at 3 n.1.) But that absence is dispositive in Respondents’ favor, not the Town’s. The owner policies in the record include “[n]o rental of the property” and “[n]o commercial use of the home,” and limit use to “owners and a limited number of their guests.” (R. p. 141; R. p. 147.) There is no evidence of a single paid rental to a member of the public, because the governing policies forbid it. The Town’s references to a national “Exchange Option” concern a member’s ability to trade an interest for an interest in a *different* home. (Pet. at 12.) They do not show that anyone pays to stay at *this* home. A member who invokes the Exchange Option, or the trademarked Home Transfer Benefit, trades away his interest in this home and acquires one elsewhere. At any given time the occupants here are the current members and their guests, not a paying public. The defined term reaches only the “commercial use” of a building. Section 21-203. A residence the members occupy for their own stays, never advertised or offered to the paying public, is not put to commercial use, whatever label the Town borrows from a hearing speaker.

C. The Town’s reading regulates ownership, not use, and exceeds its zoning authority.

The Town’s theory is that the *form* in which this home is owned, through an LLC with multiple members, is itself the violation. But zoning regulates the *use* of land, not its ownership. S.C. Code Ann. § 6-29-720(A)(1) (authorizing regulation of “the use of buildings, structures, and land”); *see Sinkler v. County of Charleston*, 387 S.C. 67, 76-78, 690 S.E.2d 777, 781-82 (2010) (invalidating an ordinance that exceeded the enabling legislation); *Holler v. Ellisor*, 259 S.C. 283, 287, 191 S.E.2d 509, 510 (1972) (a zoning board’s powers are limited to those the enabling statute confers). Section 21-203 asks how a building is *used*, not who holds title. Whether the occupants

are described as members, co-owners, or neither, the dispositive question is whether the home is made available for short stays in return for money. It is not.

To hold that ownership through an LLC, coupled with an agreed framework for sharing use, is itself a “Vacation Rental” would convert countless jointly owned homes on Sullivan’s Island into illegal uses overnight. That cannot be right, and it is not the law. The Town’s appeal to the Limited Liability Company Act does not change the analysis. That the members hold membership interests, and that under S.C. Code Ann. § 33-44-501(a) a member “is not a co-owner of” the company’s property, speaks to who holds title, not to how the building is used. The members co-own and control 100% of the home through the LLC, and they occupy it as a second residence. (R. p. 139; R. p. 150.) Nor is the home “assigned for tenancies,” the only other way a Principal Building can fall within the definition. Section 21-203. A tenancy is a possessory interest a landlord conveys to a tenant. Co-owners of a single home who agree among themselves on a non-overlapping schedule for their own use create no tenant and convey no tenancy. The governing documents say so expressly: neither the management agreement “nor the Operating Agreement, nor the ownership of a Property Interest, constitutes an arrangement, plan, or similar device where Owners receive ownership rights in, or the right to use, occupy or possess, the Home on a periodically recurring basis for a specific or discernible period of time during any given year.” (R. p. 60.) Coordinating who uses a shared home, and when, is no more an assignment of tenancies than family members dividing weekends at an inherited beach house assign tenancies to one another.

D. The Town mislabels a legal question as factual to manufacture deference.

Stripped of its labels, the Town’s second question is a complaint that the panel read the ordinance the wrong way. That is a legal argument, and the panel’s reading was correct. The Town

recasts that legal conclusion as a factual “misapprehension” only to claim the deference owed to findings of fact. The maneuver fails. The meaning and reach of “Vacation Rental” is a question of law, the panel reviewed it correctly, and its application to this particular, unusual arrangement decides nothing beyond this case. There is no question here for this Court to resolve on a statewide basis.

IV. The alternative RS-District jurisdictional holding does not warrant review (Question III).

The Town’s third question challenges the panel’s alternative holding that the BZA lacked appellate jurisdiction to reach the RS-District provisions. The Town concedes this is an “alternative ground” that “independently” leaves the result unchanged if Questions I and II fail. (Pet. at 15.) A non-outcome-determinative question is not a basis for certiorari.

The holding is also correct and record-specific. The Zoning Administrator’s letter addressed only the “Vacation Rental” issue and “never mentioned the RS Zoning Ordinance.” (Op. at 4.) The sole determination Respondents appealed to the BZA was the Vacation Rental determination. Sitting as an appellate body reviewing that determination, the BZA could not expand the appeal to RS-District provisions the Zoning Administrator never decided, provisions on which Respondents had no notice and no opportunity to be heard below. Neither S.C. Code Ann. § 6-29-800(E) nor the decision the Town invokes is to the contrary. *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 465, 602 S.E.2d 76, 79 (Ct. App. 2004), *aff’d*, 372 S.C. 230, 642 S.E.2d 565 (2007), confirms only that a board may apply the provisions of the ordinance the facts put at issue. It does not allow a board to adjudicate, in the first instance, a violation the Zoning Administrator never determined and on which the appellant had no notice.

The Zoning Administrator’s letter rested on the “Vacation Rental” definition in Section 21-203, and its reference to Article XIII was part of that determination, because Article XIII is the

article governing vacation rentals. His passing remark at the hearing that the use also offended the RS District was not the written determination from which the appeal was taken, and it gave Respondents no notice that the RS-District intent and prohibited-use provisions would be decided as independent grounds. *See Kurschner v. City of Camden Planning Comm’n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (due process requires notice and an opportunity to be heard). Whether the Zoning Administrator’s particular letter reached the RS-District provisions is a question about *this* record. It has no importance beyond this case and does not warrant review.

CONCLUSION

The Court of Appeals correctly held that the Zoning Administrator and the Board committed a legal error by stretching the definition of “Vacation Rental” to reach a co-owned second home that no one pays to occupy and that may not be rented to the public. The decision is unpublished, conflicts with no decision of this Court, presents no novel question of law, and asks at most for error correction in a single case applying a clear ordinance. For the foregoing reasons, Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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