THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Opinion No. 5284 (S.C. Ct. App. Filed January 23, 2015)

Fayrell Furr and Karole Jensen ..... Petitioners

vs.

Horry County Zoning Board of Appeals..... Respondent

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

The Petitioners would offer the following additional statements in regard to Respondent's Return.

I. This case is based on a split Opinion of the Court of Appeals in *Heilker v. Zoning Board of Appeals for the City of Beaufort*, 346 S.C. 401, 552 S.E.2d 42 (Ct.App. 2001).

The Petitioners cite *Stanton v. Town of Pawleys Island*, 317 S.C. 498, 455 S.E.2d 171 (1995) for the proposition that the Court of Appeals applied the proper standard of review in deciding this case. The Petitioners would note that *Stanton* was decided almost twenty years ago and that this Court should review this case because a significant zoning matter has not been heard by this Court recently. Second, the *Stanton* case actually supports Petitioners' argument since this Court reversed the Town of Pawleys Island's building inspector as a matter of law. Finally, in *Heilker v. Zoning Board of Appeals for the City of Beaufort*, 346 S.C. 401, 552 S.E.2d 42 (Ct.App. 2001) Judge Shuler dissented and stated that the question of use of a particular property is a matter of law for the court. The *Heilker* decision was not reviewed by this Court and Petitioners believe there are important legal principals at stake in this case which militate in favor of review. The reason is, of course, that zoning ordinances are reviewed by cities, counties and other governmental entities on a daily basis in this state and the question of use and whether it is an issue of law should be decided by the State's highest court. This is especially true in a case such as this one where there are undefined terms in the zoning ordinance that have been clearly defined by State law. Those terms include hospice, permanent overnight resident group care home, nursing home and hospital. The Zoning Board of Appeals and the Court of Appeals in determining that a hospice is an allowable use fails to find as a matter of law that the term hospice,

permanent overnight resident group care home, nursing home and hospital are mutually exclusive of each other and by definition a hospice cannot be a nursing home or permanent overnight resident group care home as the Court of Appeals holds in this case.

II. As a matter of State law, a hospice is not a nursing home or a permanent overnight resident group care home.

The Respondent in its return indicates "...the applicable Horry County Ordinance endorses reference to the South Carolina statutes to provide meaning for terms not otherwise defined in the Zoning Code. (R. p. 324-326) ("Terms used in this Code, unless otherwise specifically provided, shall have the meanings prescribed by the statutes of the state for the same terms.")." Petitioners point out that if Horry County had followed its own rules, it would have come to the conclusion the circuit court did which is that a hospice is not a nursing home or permanent overnight resident group care home. The Court of Appeals and the Zoning Board need only look to the State statutes for definitions to find as a matter of law that a hospice could not be built in the subject area because it did not meet the State statutory definition. The Court of Appeals and the Zoning Board of Appeals was bound to apply the State statutory definitions to interpret an undefined term since such is required by the rules of the Horry County Zoning Board of Appeals. In sum, the rule which the Court of Appeals misinterpreted can be stated succinctly as follows: When zoning ordinances are silent as to a meaning of a term, the Zoning Board of Appeals is obligated as a matter of law to apply those undefined terms as defined by State statute. In this case, hospice, nursing home or permanent overnight resident group care home were all defined by State statute and the Opinion of the Court of Appeals fails to consider this crucial issue.

CONCLUSION

In conclusion, this case involves important questions of law which this court has not visited in over twenty years concerning Zoning Boards of Appeals and how they apply the law and make their decisions. It further involves whether or not a Zoning Board of Appeals is obligated to apply State statutes when the statutes define terms which are undefined in the zoning ordinances. Also, this Court should address Judge Shuler's dissent in *Heilker v. Zoning Board of Appeals for the City of Beaufort*, 346 S.C. 401, 552 S.E.2d 42 (Ct.App. 2001). In *Heilker*, Judge Shuler observed that the question of "use" of a piece of real property was a question of law for the court. Because this Court has never addressed Judge Shuler's dissent upon which this case is based, this Court should review this matter. Finally, this Court should also review this matter under Supreme Court Rule 242(b) which provides for review of an appeal that considers a novel question of law, which in this case is whether or not a Zoning Board of Appeals can ignore a term which is defined in a State statute but undefined in its own zoning ordinances.

Respectfully submitted,

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March 30, 2015
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PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served a **Reply to Return to Petition for Writ of Certiorari** on the Respondent, through its attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Emma Ruth Brittain, Esquire
Lea Montgomery Cromer, Esquire
Thomas & Brittain, P.A.
Post Office Box 1290
Myrtle Beach, South Carolina 29578

DATE OF MAILING: March 30, 2015

Shelia Y. McCumbee

Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 30th day of March, 2015

Mary J. O'Donnell

Notary Public for South Carolina
My Commission Expires: 6/1/16

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March 30, 2015

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: *Fayrell Furr and Karole Jensen v. Horry County Zoning Board of Appeals*
Appellate Case No. ~~2013-001188~~ 2015-000271
Our File No. 2012-0301C

Dear Mr. Shearouse:

Enclosed please find the original and seven (7) copies of our Reply to Respondent's Return to Petition for Writ of Certiorari and Proof of Service in the above-captioned case. Please return a filed copy to this office in the self-addressed, stamped envelope provided for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated document on Respondent through counsel of record.

With best regards, I am

Sincerely yours,

Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Emma Ruth Brittain, Esquire
Lea Montgomery Cromer, Esquire
O. Fayrell Furr, Jr./Karole K. Jensen