

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 John Doe,)
)
 Plaintiff,)
)
 vs.)
)
 Board of Zoning Appeals (BZA) and Town)
 Of Sullivan's Island (S.I.),)
 S.I. Zoning Administrator, and)
 S.I. Building Dept., Individually)
 and In Official Capacity,)
)
 Defendants.)
)

COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2015-CP-10-0775

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 SC Court of Appeals
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 JULIE J. ARNOLD
 CLERK OF COURT

**ORDER GRANTING
 MOTION TO DISMISS**

On September 2, 2015, this matter came before the Court on Defendants/Respondents' Motion to Dismiss John Doe Plaintiff/Appellant's ("Plaintiff/Appellant" or "John Doe") Notice of Appeal and Request for Pre-Litigation Mediation and on Plaintiff/Appellant's Rule 59(e) Motions.

Cynthia Holmes appeared at the hearing as a *pro se* Litigant. John P. Linton, Jr., Esq. represents Defendants/Respondents and also appeared at the hearing.

After reviewing the pleadings, motion, and memorandum that have been filed, and considering the arguments at the hearing, the Court finds that Plaintiff/Appellant's Rule 59(e) Motions are moot. Plaintiff/Appellant's Rule 59(e) Motions, filed on May 7, 2015 and June 19, 2015, seek reconsideration of the Court's Form 4 Order filed on April 10, 2015 and Formal Order filed on April 30, 2015, dismissing Plaintiff/Appellant's appeal. By Form 4 Order filed May 6, 2015, both of those orders were rescinded and Defendants/Appellants' Motion to Dismiss reopened for rehearing of that motion. Therefore, Plaintiff/Appellant's Rule 59(e) Motions are

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moot. Additionally, for the reasons explained below, the Court grants Defendants/Respondents Motion to Dismiss.

On February 9, 2015, John Doe filed the Notice of Appeal and Request for Pre-Litigation Mediation purporting to appeal a decision of the BZA and request pre-litigation mediation of that appeal. The Notice of Appeal and Request for Pre-Litigation Mediation states, in total, as follows:

Pursuant to South Carolina statutory and case law, plaintiff respectfully requests permission to proceed under the current caption anonymously as John Doe regarding the BZA appeal of Permit Number 2014-2899 for 1607 Poe Avenue, Sullivans Island (SI), SC. In accordance with South Carolina Code, Section 6-29-825, notice of appeal and request for pre-litigation mediation is hereby timely filed.

The Notice of Appeal and Request for Pre-Litigation Mediation was signed as J. Doe and gave the address "2061 Middle St. S.I., SC 29482-0187." In response to this Notice of Appeal and Request for Pre-Litigation Mediation, Defendants/Respondents filed this Motion to Dismiss.

Plaintiff/Appellant purports to appeal an order from the Town of Sullivan's Island Board of Zoning Appeals ("BZA") by filing a notice of appeal and request for mediation. South Carolina Code section 6-29-820(B) allows a property owner whose land is the subject of a decision of the board of appeals to initiate an appeal in two alternative methods by filing, within thirty days of the mailing of the board of zoning appeals decision, "a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825." S.C. CODE § 6-29-820(B)(2). Notably, this method of initiating an appeal—filing a notice of appeal accompanied by a request for litigation mediation—is only available to the owner of the land that is the subject of the zoning board of appeals decision. *Id.* The language of the statute is clear and unambiguous that only the owner of the land that is the subject of a

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zoning board of appeals decision may appeal using the method provided for by S.C. CODE § 6-29-820(B)(2).

Here, the Notice of Appeal and Request for Pre-Litigation Mediation does not include any information as to the identity of the Plaintiff/Appellant except an address, which is not the address that was the subject of the BZA appeal referenced in the Notice of Appeal and Request for Pre-Litigation Mediation. Therefore, the Notice of Appeal and Request for Pre-Litigation Mediation is insufficient to satisfy the statutory requirement in S.C. CODE § 6-29-820(B)(2) for initiating an appeal of a decision of a board of zoning appeals decision by filing a notice of appeal accompanied by a request for litigation mediation. Additionally, it is worth noting that Plaintiff/Appellant confirmed at the hearing that she, the *pro se* litigant, is not the owner of the property that was the subject of the BZA decision. Therefore, based on the clear unambiguous language of the statute, the appeal is dismissed. See e.g. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (stating the general rule that “[w]here the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”).

Plaintiff/Appellant argued at the hearing that her appeal should not be dismissed because she is the owner of a particular piece of property that, while not the subject of the BZA’s decision, is allegedly affected by the BZA’s decision. The Court rejects this argument because the process of appealing a BZA decision by filing a notice of appeal and requesting mediation—the process invoked by the Notice of Appeal and Request for Pre-Litigation Mediation—is only

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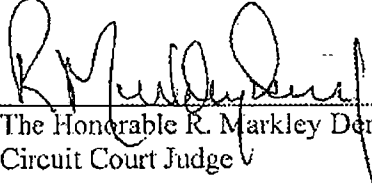
available to the owner of the land that is the subject of the zoning board of appeals decision, which Plaintiff/Appellant has confirmed she is not.¹

CONCLUSION

Therefore, for the reasons explained above, Plaintiff/Appellant's Rule 59(e) Motions are found to be **MOOT** and Defendants/Respondents' Motion to Dismiss is hereby be **GRANTED**.

AND IT IS SO ORDERED.

September 17, 2015
Charleston, S.C.


The Honorable R. Markley Dennis, Jr.
Circuit Court Judge

¹ The Court notes that a person who may have a substantial interest in any decision of a board of appeals by a BZA decision, as Plaintiff/Appellant asserts she is, may appeal from a decision of a board of zoning appeals to the circuit court by, within thirty days of the mailing of the decision of the board, "filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law." S.C. CODE § 6-29-820(A). Here, Plaintiff/Appellant has not filed any petition with the Notice of Appeal and Request for Pre-Litigation Mediation. To the extent Plaintiff/Appellant seeks to appeal the BZA decision as a person having a substantial interest in the decision, no issues have been preserved or raised for appeal and the Notice of Appeal and Request for Pre-Litigation Mediation fails to comply with the statutory requirement that the appellant timely file a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law.

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