

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Christ Central Ministries, )  
Petitioner, )

Case No. 2015-CP-40-03357

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vs. )

ORDER REVERSING DECISION OF BOARD OF ZONING APPEALS

DEC 07 2015

SC Court of Appeals

City of Columbia Board of Zoning Appeals, )  
Respondent. )

RICHLAND COUNTY  
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2015 NOV 12 AM 9:53  
JEANNETTE W. MORRIS  
C.C.P. & G.S.

**BACKGROUND**

This matter is before the court on appeal from a decision of the City of Columbia Board of Zoning Appeals (Board) upholding an interpretation by the City's Zoning Administrator (Administrator) of a provision in the Code of Ordinances for the City of Columbia regulating billboards. S.C. Code Ann. §6-29-820 (1976). A hearing was held in open court in Columbia on November 6, 2015, at which time the parties appeared through counsel.

**STANDARD OF REVIEW**

On appeal the finding of facts by the Board are to be treated in the same manner as the finding of facts by a jury. S.C. Code Ann. §6-29-840 (1976); *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 2015). The role of the court in such an appeal is to "determine only whether the decision of the board is correct as a matter of law." S.C. Code Ann. §6-29-840 (1976).

In making the determination whether the interpretation of an ordinance is correct as a matter of law, the court is to be guided by several well-established principles: (1) legislative intent will prevail if it can reasonably be discovered in the language used in an ordinance; ordinance must be interpreted in a reasonable, practical and fair manner; and, (3) the terms used

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in the ordinance must be taken in their ordinary and popular meaning. *Charleston County Parks & Recreation Comm'n. v. Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995). And, where, as here, the ordinance governs the right of a person to use private property, the ordinance is to be strictly construed, as the Supreme Court of South Carolina explained in *City of Myrtle Beach v. Juel P. Corp.*, 344 S.C. 43, 543 S.E.2d 538, 540 (2001):

“[O]rdinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose.” *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953).

Finally, in ascertaining the intention of the legislative body from the language used in a statute or ordinance, the court will reject an interpretation that is “so plainly absurd that it could not possibly have been intended.” *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364, 366 (1994).

#### **APPLICABLE ZONING ORDINANCE PROVISION**

This appeal is to be determined, as was the Board’s decision, by consideration of the decision of the Administrator to deny a permit sought by petitioner to replace a fixed copy billboard with a changeable copy billboard as governed by a provision in the City’s zoning code:

Notwithstanding the provision of Division 7 of this article, the fixed display surface of a legal nonconforming outdoor advertising sign may be replaced in whole or in part by display surface area with changeable copy, except under no circumstances is changeable copy permitted upon an outdoor advertising sign when that sign is within 300 feet of any residential district, including property zoned PUD-R. Generally this permissibility does not include the replacement of, or some other substantial alteration to, the sign support structure, except where existing metal sign support structures would be replaced with new metal sign support structures.

§17-404(e)(4) Code of Ordinances of the City of Columbia.

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## FACTS

The record before the Board establishes that petitioner was the owner of real property located at on the southeast corner of the intersection of Main Street and Elmwood Avenue in the City of Columbia. Petitioner had leased to Lamar Companies (Lamar) a portion of the property on which Lamar had erected a fixed display billboard. In early 2014, Lamar sought and was granted a permit under section 17-404(e)(4) of the zoning ordinance to replace the existing billboard with a changeable copy billboard. In the spring of 2014, as the Lamar lease was expiring, petitioner notified Administrator that it wished to obtain a permit for a changeable copy sign on its property, and in May 2014 notified Administrator of the appointment of an agent other than Lamar, Stevenson, to pursue a permit for the replacement billboard. On June 11, 2014, subsequent to petitioner's notice to Administrator of its appointment of Stevenson as its agent for purposes of obtaining a permit, Administrator extended Lamar's permit, which was on the verge of expiration, to December 31, 2014. On June 18, 2014, Administrator, responding to petitioner's letter of April 16, 2014, and without advising petitioner that Lamar's permit had been extended to December 31, 2014, advised petitioner that it or another would be issued a permit upon expiration or abandonment of the Lamar permit, provided the application was in conformity with the applicable ordinance.

Lamar removed its fixed display billboard in August 2014. On September 23, 2014, petitioner submitted an application for a permit to replace the fixed display billboard with a changeable copy billboard. On October 8, 2014, Administrator wrote to Lamar to ask if Lamar intended to cancel its permit "so that staff may issue a new permit to the current applicant [petitioner] to finish replacement...." No reply from Lamar is contained in the record, but since petitioner in early January 2015 communicated its desire to obtain a permit for the changeable

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copy billboard, it seems that Lamar's permit remained extant until expiration on December 31, 2014. On February 2, 2015, Administrator wrote to Stevenson to give his interpretation of the ordinance. The interpretation of the ordinance as stated by Administrator in his letter:

It is my understanding that the non-conforming sign at the above referenced location was removed by the sign owner on or about August 2, 2014. As such, this office would not be able to issue a permit, per §17-404(e)4, to replace a sign that is no longer existing.

### **BOARD'S CONCLUSIONS OF LAW**

Following a hearing on April 14, 2015, the Board on May 11, 2014, issued its opinion on petitioner's appeal from Administrator's denial of its application for a permit and stated the following conclusions of law:

Pursuant to the power and duty of the Board of Zoning Appeals to review administrative decisions and determinations (§17-112), we have heard the testimony and reviewed the Applicant's request for administrative appeal, and find that the appellant has failed to prove that the Zoning Administrator erred in his determination regarding the issuance of a zoning permit to install a digital outdoor advertising sign per §17-404(e)(4).

Therefore, based on the foregoing, the Board of Zoning Appeals concludes that the decision of the Zoning Administrator as describe above is hereby **AFFIRMED.**

### **ISSUE BEFORE THE COURT**

Administrator interpreted the ordinance to mean that once a fixed display sign was removed it could not be replaced. The issue before the court on this appeal is whether this interpretation is correct as a matter of law.

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## DISCUSSION

The ordinance, in its applicable provision, uses the word "replaced" twice and the word "replacement" once. The ordinance provides that the "fixed display surface of a legal nonconforming outdoor advertising sign may be replaced in whole or part...with changeable copy." "Replacement" or substantial alteration of the sign support structure is not allowed except where an existing metal sign support structure would be "replaced" with a new metal structure.

According to the City, the petitioner waited too long to seek a permit for a changeable copy billboard. However, no language in the relevant provision of the ordinance imposes a period in which one must act to seek a permit, and strict construction of the ordinance does not grant this court authority to impose such a limitation. *Helicopter Solutions, Inc., supra.*

Here, both parties agree the Administrator's determination that petitioner was not entitled to a permit for a changeable copy billboard was based entirely on Administrator's interpretation of the ordinance rather than any disputed issues of fact; therefore, a review of that decision, and the Board's affirmation of that decision, is a matter of law. In such a review the court has a broader, more independent role than it would in reviewing findings of fact. *Helicopter Solutions, Inc., supra.*

Based on the plain language of the ordinance, even in those circumstances where a fixed display billboard is a "legal nonconforming outdoor sign" it may be replaced with a changeable copy billboard unless it is within 300 feet of a residential district. Similarly, even a metal support structure of the legal nonconforming fixed display sign may be replaced with a new metal sign support structure. The intent of the ordinance is to allow a new display surface, changeable copy rather than fixed copy, and a new metal structure. This intent is easily

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ascertained by giving the words "replaced" and "replacement" their ordinary and popular meanings. The common meaning of "replaced" is "to take or fill the place of," or "to be a replacement for." "Replacement" is synonymous with "substitution." *Webster's II New College Dictionary* (Houghton Mifflin Co., 1995).

Under Administrator's interpretation of the ordinance, a changeable copy billboard could never be constructed in place of a fixed copy billboard because once the fixed copy billboard is removed, it is "no longer existing." The intent of City Council, expressed in clear language in the ordinance, authorizes the removal of fixed copy billboards and their support structures in conjunction with erecting changeable copy billboards and new metal support structures in specified circumstances.

As a matter of law, Administrator's interpretation of the ordinance is an error of law. The language of the ordinance is unambiguous, and the intention of the Columbia City Council is expressed clearly in the replacement language in the ordinance. Administrator's interpretation is inconsistent with the legal requirements that an ordinance be interpreted in a reasonable, practical and fair manner, and that an absurd result be avoided. It is unreasonable, unfair and absurd to believe that this ordinance precludes the erection of a replacement billboard once a fixed copy billboard is removed. Allowing the removal of an existing fixed copy billboard and its replacement with a new changeable copy billboard, including a new metal support structure in the appropriate circumstance, is both contemplated in the language used in the ordinance and the expressed intent of the City Council.

**ORDER**

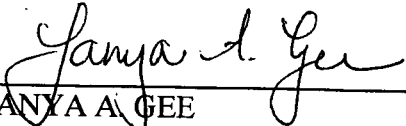
Based on the foregoing, IT IS HEREBY ORDERED that the May 11, 2015 decision of the City of Columbia Board of Zoning Appeals be, and the same hereby is, reversed.

IT IS FURTHER ORDERED that petitioner be granted a permit to erect a changeable copy billboard, including a replacement metal sign support structure on its property.

AND IT IS SO ORDERED.

Columbia, South Carolina

November 12, 2015

  
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TANYA A. GEE  
Presiding Judge  
Fifth Judicial Circuit

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