THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 5419 (S. Ct. App. Filed June 29, 2016)
Appellate Case No. 2016-002360

Arkay, LLC and Robert R. Knoth, its member ..... Petitioners,

v.

City of Charleston, City of Charleston Board of Zoning Appeals, Andrew Pinckney Inn and Michael A. Molony ..... Respondents.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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CONSIDERATIONS FOR THE ISSUANCE OF A WRIT OF CERTIORARI

The issuance of a Writ of Certiorari is not a matter or right or a matter of course. Whether to issue a Writ rests in the sound discretion of this Court, and a petition for a Writ will not be granted unless there are special and important reasons for doing so. SCACR, Rule 242 (b).

QUESTION PRESENTED

Is the opinion of the Court of Appeals consistent with rules of statutory construction?

STATEMENT OF THE CASE

This case poses a question of statutory construction. The specific question posed is the intent of the Charleston City Council in enacting an ordinance requiring that an animal stable be at least 100 feet from a residential zoning district.

Petitioners operate a horse carriage tour business in downtown Charleston. They seek to locate a stable at 45 Pinckney Street. No. 45 Pinckney Street is in the Market Area of downtown and is zoned General Business (GB).

The City's Zoning Ordinance allows stables in a GB zone if the Board of Zoning Appeals grants a special exception, after determining the stable meets certain criteria. One criterion is that the stable cannot be located within 100 feet of a residentially zoned district.

No 45 Pinckney Street is occupied by one building, the walls of which are flush with all lot lines. The building has one means of ingress and egress to Pinckney Street. A survey commissioned by Petitioners demonstrated that the front façade of the building was within 100 feet of a residentially zoned district.

When the Petitioners appeared before the Board, they sought to satisfy the 100 foot separation requirement by proposing to house their horses in the rear of the building, arguing

that, for purposes of determining the separation requirement, the measurement was to be taken from the location within the building where the animals were stored, not from the building itself. Petitioners further proposed subjecting 45 Pinckney Street to a horizontal property regime, allocating 79% of the square footage of the building to Unit A, where horses would be stored, and 21% of the building to Unit B, where carriage offices, customer waiting areas and restrooms would be located. The statutorily prescribed access from Unit A to Pinckney Street was by way of easement and/or common area through Unit B.

The Board of Zoning Appeals denied the special exception on the basis of the stable being located within 100 feet of a residentially zoned district. The Board rejected Petitioners' argument that a stable was only the area in a building in which the animals were stored, and it was from that area that the separation measurement was to be made. The circuit court reversed the Board's decision, holding that the use of the term "buildings" instead of "stables" in one of the special exception criteria was evidence of an intent by Council that buildings used as stables would have multiple uses, and thus the separation requirement was to be measured from the place within the building where the stabling "use" occurred. The Court of Appeals reversed the decision of the circuit court in Opinion 5419, filed June 29, 2016. Petitioners' Motion for a Rehearing or Rehearing En Banc was denied by an Order issued on October 27, 2016.

SUMMARY OF ARGUMENT

The sole reason proffered to justify the issuance of a Writ is the contention that the Court of Appeals, in construing a City zoning ordinance, did so in a manner that rendered a word in the ordinance meaningless. Such is not at all the case.

The issue presented by this Petition is whether, when imposing a separation requirement of 100 feet between an animal stable and a residential district, the Charleston City Council

intended for the measurement to be made from the building that housed the animals or from the place within the building where the animals were stalled. In their argument to the Board of Zoning Appeals, the Circuit Court and the Court of Appeals, Petitioners stressed that zoning regulations applicable to stables have to be interpreted in the context of horse carriage tour businesses, all of which begin and end in the dense Market Area of the City. Because building space in this area of the City is scarce, they argued, Council must have known that buildings there would be put to multiple uses, and thus when it comes to measuring the distance from a stable and a residential area, the measurement is taken from the stalls where the horses are kept, not from the building in which the stalls are located. Petitioners ascribe great weight to Council using the term "buildings", and not "stables" in a provision of the ordinance that addresses ventilation.

As an initial matter, the zoning regulations for stables apply city-wide, not just in the Market Area. Per zoning regulations, a "building" is a structure used for the purpose of housing animals. Per the zoning regulations, the term "structure" includes "buildings". (App. ROA, Vol. I, p. 217). Thus, per zoning regulations, a stable is a building, or structure. It is undeniable that the building at No. 45 Pinckney Street is within 100 feet of a residential district. Because a stable is subsumed by the term "building" in the zoning ordinance, the Opinion of the Court of Appeals holding that the measurement be taken from the building, and not from a place within it, did not and could not render the term "building" meaningless, because per the zoning regulations, a stable comes under the definition of "building".

If zoning regulations for stables are to be construed in the context of the horse carriage touring business, as contended by Petitioners, such only further supports the reasoning of the Court of Appeals. This is so because when enacting regulations applicable to this business,

which Petitioners stress Council knew were operated in a dense area where space is at a premium, City Council made plain its intent that a stable is a building. In the Market Area where these businesses are located, Council drew a clear distinction between a stable and a stall. A stable is "the barn where the animals are kept". A stall is the "individual place within the barn where each animal is kept". (App. ROA, Vol. I, p. 245). If the zoning stable regulations were indeed enacted in context of the horse tour carriage business, the tourism provisions applicable to stables become front and center. Per those regulations, the building at 45 Pinckney Street is the "barn", and the place in the building where the horses are proposed to be kept is the "stall". The separation measurement would be taken from the barn, or building, not from the stalls within it.

ARGUMENT

I. THE OPINION OF THE COURT OF APPEALS IS WHOLLY CONSISTENT WITH RULES OF STATUTORY CONSTRUCTION AND DID NOT RENDER ANY WORD OF THE ZONING ORDINANCE MEANINGLESS.

The reasoning of the Court of Appeals comports with all rules of statutory construction. The Court of Appeals, as was the Board of Zoning Appeals, was confronted with discerning the place from which City Council intended for the separation requirement between a stable and a residentially zoned district to be made.

Relevant to this inquiry are the special exception criteria that must be satisfied if a stable is to be located in a General Business zone. As noted by the Court of Appeals, all such criteria address how a stable is configured and operated. Section 54-206 (p) (1) establishes the separation requirement; Subsection (p) (2) requires certification from the Tourism Commission, intended to address the configuration and operational requirements of stables in the Market Area (See App. ROA, Vol. I, p. 249); Subsection (p)(3) requires compliance with city, county and state regulations; Subsection (p)(4) addresses the cleaning, loading and tacking operations;

Subsection (p)(5) requires a plan for handling refuse; Subsection (p) (6) requires a plan for drainage; and Subsection (p)(7) requires ventilation. (App. ROA, Vol. I p. 237) These criteria do not address, the "use" or "activity" of stabling, as found by the Circuit Court and as urged by Petitioners. These criteria address the physical structure, where it is located and how it is operated.

In discerning legislative intent, rules of statutory construction admonish that words be given their plain and ordinary meaning, without resort to a forced construction that is illogical or results in an absurdity. Abraham v. Palmetto Unified School District No. 1, 343 S.C. 36, 48, 538 S.E. 2d 656, 662-663 (Ct. App. 2000). A statute as a whole must receive a practical, reasonable and fair interpretation, consonant with the purpose, design and policy of the lawmakers. Words should be given their plain and ordinary meaning, and courts should not look to impose another meaning. State v. Johnson, 343 S.C. 693, 695, 541 S.E. 2d 855, 857 (Ct. App. 2001).

Petitioners' entire case stands or falls on the intent of City Council in using the term "buildings" as opposed to "stables" in one of the seven special exception criteria. Petitioners contend Council used the term building "advisedly", and indicates that Council was aware of crowded conditions in the Market Area and that stables would have to be in buildings where other uses would occur. From this speculation, they extrapolate that Council must have meant for the measurement to be taken from the area of a building where animals are stalled. There is, however, no need to engage in such speculation or extrapolation to discern Council's intent. This is so because City Council defined the term "building" and that definition encompasses a stable. Council defined "building" as "any structure built for the support, shelter, housing or enclosure of persons, animals or property of any kind...". In its definition of "structure", the Council made clear that it "shall include the word 'building' ". (App. ROA, Vol. I, p. 217, 234)

Because the term "building" includes a stable, the terms are not "separate and distinctive" as argued by Petitioners. Because the term "building" encompasses a stable, the use of the term "building" in the seventh special exception criterion neither justifies any heightened parsing, nor in any way supports the conclusion urged by Petitioners that the use of the term is indicative of Council's intent that a stable is a not building, but an activity within a building. The Court of Appeals attributed to the term "building" the definition as set out in the ordinance, which encompasses a stable. Such hardly results in the word being rendered meaningless. Such only results in the word being given the very meaning attributed to it by the legislative body.

If Petitioners' theory that the stable regulations of the zoning ordinance were drafted with the downtown horse carriage businesses in mind, then it is only logical, if not incumbent, to review what the Council said was a stable for these businesses. That review reveals, unequivocally, that Council deemed a stable to be a building.

In the tourism regulation ordinances, City Council was clear: a stable is the "barn where the animals are kept"; a stall is the "place within the barn where each animal is kept." (App. ROA, Vol. I, p. 245). Petitioners' contention that Council must have intended for stables to be in multi-use buildings and thus the location of the animals in the building is where it intended the separation requirement to be measured from, is undermined by the clear distinction Council made between a stable and a stall in the Market Area. It is inconsistent to contend that a stable means one thing per the tourism ordinance and another per the zoning ordinance if Petitioners' assertion that the zoning regulations were designed for stables used in the Market Area is to be taken as true.

Moreover, to construe the term "building" as proposed by Petitioners would violate rules of statutory construction, and more than one of them. Petitioners' construction of the term

would require outright ignoring that the zoning definition of building includes a stable. Provisions of statutes are not to be ignored, as all provisions must be given full force and effect. Wade v. State, 348 S.C. 255, 261,559 S.E.2d 843, 845 (2002) Petitioners' construction of the term would require a forced interpretation, as the ordinance speaks in terms of a building being ventilated, not the place within it. Words in statutes should not be subject to a forced reading. Abraham v. Palmetto Unified School District No. 1, *supra.*

And if the zoning regulations were formulated with the downtown horse carriage businesses in mind, the zoning and tourism regulations are *in pari materia,* requiring that they be read together and harmonized, if possible. Beaufort Cty. v. S.C. State Election Comm'n, 395 S.C. 366, 371, 718 S.E.3d 432, 435 (2011). Harmony between the ordinances can be readily achieved. The intent of Council regarding a stable in the tourism regulations could not be more clearly stated: a stable is a barn, or building, where animals are kept; a stall is the place within the building where animals are kept. Consistent with this express intent, Council included a stable within the zoning definition of building. To construe the term "building" in the zoning regulations any other manner results in an unnecessary inconsistency between statutes *in pari materia.*

II. THE REASONING OF THE COURT OF APPEALS IS NOT FLAWED

Petitioners claim the reasoning of the Court of Appeals is flawed because it renders the word "buildings" in the seventh special exception criterion meaningless. They insist that the terms "stable" and "building" are distinct. While stable and building may be different words, per the zoning ordinance, a stable comes under the definition of building. Petitioners' effort to attribute great significance to the use of a term that has the same meaning as stable falls short.

Simply because a building used as a stable may include other uses does not transform the building into something else. That is especially true here where but 435 square feet, or 21% of the square footage of the building, is programmed for purposes Petitioners claim to be non-stable. To accept Petitioners' view, the use of the remaining 79% of the square footage of the building as a stable is to be disregarded, resulting in a classic case of the tail wagging the dog. (App. ROA, Vol. I, pp. 106, 107).

The Court of Appeals did not err in noting that tacking and waiting areas, restrooms and offices are associated with stables. Petitioners' challenge to this observation is an effort to create an issue where there is none. Common experience supports the Court of Appeals' finding. Stables house animals. They also commonly include areas for storage, caretaker quarters, running water, restroom facilities and work space. Moreover, this finding by the Court is in lockstep with the facts of this case. Petitioners were proposing to establish a stable for use in a horse carriage business. In light of this circumstance, it goes without saying that restrooms, waiting areas and an office would be associated with a stable used for that purpose.

Petitioners cite the tourism regulations to argue that the "place where animals are kept" should be the focus for discerning what a stable is. But the tourism regulations provide no safe harbor to the Petitioners. Under these regulations, a stable is not the "place" where animals are kept. A stable is the "barn where the animals are kept". Under the tourism regulations the "place" where animals are kept are the stalls within the barn. (App. ROA, Vol. I, p. 245). As applied to No. 45 Pinckney Street, the stable is the building, not the stalls. And while the stalls might be pushed to the rear of the building so that the place where the animals are stalled is over 100 feet from a residential district, the building, or barn, that contains those stalls falls within the 100 foot proscription.

Because both the tourism and zoning regulations dictate that a stable is a structure, the Court of Appeals' finding the Petitioners' proposed definition of stable as only where the animals are kept would undermine other provisions pertaining to stables is not flawed. If only the part of a building where animals are stored constitute a stable, the Court of Appeals was correct in making note that important stable regulations pertaining to smoking, inspection, cleaning and the like would be limited to that location, eroding their purpose and efficacy. This reasoning by the Court of Appeals is not flawed; it cogently underscores the absurd results that follow from attempting to segregate one building into two or more by way of imaginary lines.

CONCLUSION

At bottom, Petitioners take issue with how the Court of Appeals construed the ordinances before it. As demonstrated, the Court of Appeals' construction honored longstanding principles of statutory construction. Petitioners' disagreement with the conclusion it reached simply does not rise to the level of a special or important reason to issue a Writ. The Petition should be dismissed.

Respectfully submitted,

Charleston, South Carolina
12/20, 2016

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CERTIFICATE OF SERVICE

I certify that I have served the Return to the Petition for the Issuance of a Writ of Certiorari on Arkay, LLC and Robert R. Knoth, its member, on December 20, 2016, by depositing the Return in the U.S. Mail, first-class, postage prepaid addressed to their attorney of record, Capers G. Barr, III, Post Office Box 1037, Charleston, South Carolina 29402

December 20, 2016

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