

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-096 (S.C. Ct. App. Filed March 8, 2017)

Robert and Pamela Wilkes,

Petitioners,
~~Appellants,~~

v.

Town of Pawleys Island,
Georgetown County Planning
Commission,

Respondents.

RECEIVED

APPENDIX

JUN 23 2017

S.C. SUPREME COURT

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2016-000029

Robert and Pamela Wilkes,

Appellants,

v.

Town of Pawleys Island,
Georgetown County Planning
Commission,

Respondents.

RECORD ON APPEAL

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JUL 15 2016
SC Court of Appeals

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P. 1
248-7182

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2009-CP-22-2076

Robert and Pamela Wilkes,
Appellants,

FINAL ORDER

v.

Town of Pawley's Island, South Carolina,
Respondent.

GEORGETOWN COUNTY, S.C.
2014 DEC 18 AM 10:37
ALMA WHITE
CLERK OF COURT

DATE OF HEARING:
PRESIDING JUDGE:
ATTORNEY FOR APPELLANTS:
ATTORNEY FOR RESPONDENT:
COURT REPORTER:

November 6, 2014
Honorable Larry B. Hyman, Jr.
Joseph Singleton
N. David DuRant
Natalie Dahl

A hearing was held by the Town of Pawley's Island Board of Zoning Appeals on March 29, 2012 at 6:00 P.M. at the Waccamaw Neck Branch Library in Pawley's Island community of Georgetown County, South Carolina. The purpose of the hearing was the appeal of Robert J. Wilkes and Pamela J. Wilkes (hereinafter, "Appellants") who are requesting a variance for a six-foot wide walkway from the required four-foot walkway ordinance. The property front is on Atlantic Avenue and the rear property backs up to the ocean. Appellants' property is located at 302 Atlantic Avenue on Pawley's Island.

The Circuit Court's Order, filed July 22, 2011, remanded this matter and the prior Zoning Board of Appeal Order, dated November 24, 2009, back to the Zoning Board of Appeals to issue an order. The Appeal was heard and an order was issued by the Pawley's Island Board of Zoning Appeal by Acting Chairman Frank E. Robison on May 3, 2012, pursuant to the Circuit Court's Order. The Order denied the Appellants variance request.

Scanned

At the May 3, 2012 Hearing the Appellants requested a variance to Section 2-10.1 of the Uniform Development Ordinance that requires a maximum four-foot wide walkway. After being duly sworn, Mr. Wilkes testified that he was renovating his house and that he had hired one contractor to renovate his house and a separate contractor to work on the walkway. The previous walkway, before the renovation began, was greater than four feet but less than six feet. The contractor for the walkway submitted an application for the walkway permit, but no permit was ever issued, and eventually a stop work order was issued as to the walkway. A six foot walkway was built and Mr. Wilkes testifies that the removal and fixing of the walkway in compliance with the ordinance would cause hardship.

A variance may be granted in an individual case of unnecessary hardship upon a finding by the Board of Zoning Appeals, that: (1) there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; (2) the application of the Zoning Regulations for this particular piece of property will create unnecessary hardship; (3) such conditions that are peculiar to that particular piece of property involved; and (4) relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of the Zoning Regulations with a comprehensive plan.

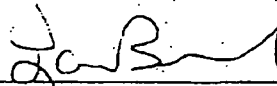
Based upon the plain language of the ordinance, the Order Issued by the Pawley's Island Board of Zoning Appeals is affirmed.

According to the evidence and testimony presented to the Pawley's Island Board of Zoning Appeals the Appellants were never issued a permit prior to building the walkway, yet the walkway was built and not built the correct width. The hardship of having to remove said parts of the walkway to comply with the Unified Development Ordinance was caused by the contractor and/or owner's agent and was preventable and self induced. Further, there are no

extraordinary and exceptional conditions pertaining to the property, in that there are many similar long walkways which are compliant with the ordinance. Finally, granting relief and allowing the six foot walkway would cause substantial detriment to the public good and impair the purpose of and intent of the zoning regulations with a comprehensive plan.

IT IS, THEREFORE, that the Appellants' request for a variance to Section 2-10.1 to construct a six foot wide walkway is denied and the walkway shall be reduced to four feet in width and brought into compliance with the Unified Development Ordinance.

IT IS SO ORDERED.



The Honorable Larry B. Hyman, Jr.
Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina
Dec 8 2014
November 17, 2014

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Robert and Pamela Wilkes,
Appellants,

v.

Town of Pawley's Island, South Carolina,
Respondent.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2009-CP-22-2076
)
)
)

) ORDER DENYING MOTION TO
) ALTER OR AMEND
)
)
)

FILED
GEORGETOWN COUNTY, S.C.
2015 DEC 21 AM 11:43
ALMA H. HARRIS
CLERK OF COURT

DATE OF HEARING:
PRESIDING JUDGE:
ATTORNEY FOR APPELLANTS:
ATTORNEY FOR RESPONDENT:

October 12, 2015
Honorable Larry B. Hyman, Jr.
Kathryn H. Sligh
N. David DuRant

This matter is before the court on the Appellants' Motion to Alter or Amend the Order filed on January 7, 2015 pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The matter was heard by this Court October 12, 2015.

FINDINGS OF FACT

1. Robert J. Wilkes and Pamela J. Wilkes (hereinafter, "Appellants") own property located at 302 Atlantic Avenue within the municipality of Pawleys Island.
2. The Appellants began extensive remodeling of their residence and built a walkway from their residence to the beach in the Summer of 2009.
3. The appellants applied for a permit for said walkway on June 25, 2009.
4. Thereafter, a walkway was constructed on the Appellants property, without approval and without securing the necessary permits from the Zoning Department.
5. The walkway, landward of the OCRM line, exceeded four feet in width is in violation of the Town of Pawleys Island Unified Development Ordinances.

6. The Appellants contend that their Revised Application for a variance, submitted on November 17, 2009, seeking to allow their walkway exceeding four feet in width, was wrongfully denied.
7. The Appellants base their contention on non-authoritative documents, specifically the "quick analysis tutorial", which states walkways that exceed four feet in width can be extended to a maximum of six feet in width when two feet of the width of the walkway consists of benching.
8. The Town of Pawleys Island (hereinafter known as "Town") responds by arguing that the "quick analysis tutorial" is not a legally binding document and that the "tutorial" itself specifically refers to the Pawleys Island Unified Development Ordinances for any stipulation of details.
9. Appellants also contend they are entitled to equitable relief as they assert the Zoning Board of Appeals violated the Freedom of Information Act ("FOIA") in connection with an executive session.
10. The Town responds that Appellants did not preserve this FOIA issue and Appellants are not entitled to any equitable relief.

PROCEDURAL HISTORY

11. In 2009 the Town of Pawleys Island informed the Appellants that their walkway exceeded the permissible width provided for in the Town's zoning ordinance.
12. On August 28, 2009 the Appellants submitted a variance request to the Zoning Board of Appeals and on November 24, 2009 the Appellants request was denied.

13. On Nov. 17, 2009 the Appellants submitted a revised building permit application to the Town of Pawleys Island and to Georgetown County Planning, stating that two feet of said walkway would be benches. The permit was denied.
14. An appeal hearing was held by the Town of Pawley's Island Board of Zoning Appeals on March 29, 2012 at 6:00 P.M. at the Waccamaw Neck Branch Library in Pawley's Island community of Georgetown County, South Carolina. This appeal was denied.
15. The Appellants appealed the denial to the Circuit Court and the Honorable Larry B. Hyman, Jr. issued an Order Remanding the Case for Mediation and Rehearing for Findings of Fact and Conclusions of Law. The matter was eventually reheard by the Zoning Board of Appeals, and the decision issued on May 3, 2013 denied the Appellants' request.
16. The decision of the Zoning Board of Appeals was again appealed by the Appellants and the Honorable Larry B. Hyman, Jr. affirmed the Zoning board of Appeals decision on December 18, 2014 affirming the Pawleys Island Zoning Board of Appeals May 3, 2013 decision.
17. The Appellants filed a Motion to Alter or Amend the Order on January 7, 2015, and this matter was heard by this Court October 12, 2015.

FINDINGS OF LAW

18. The Respondents are not estopped from denying Appellants a variance. There is no vested right for the Appellants to have continued use of their walkway. The Zoning Board of Appeals did not violate the South Carolina Freedom Information Act. Further, the final issue which will be discussed below is whether the Appellants' revised application submitted on November 17, 2009 was wrongfully denied.
19. This court has subject matter jurisdiction over this matter on appeal.

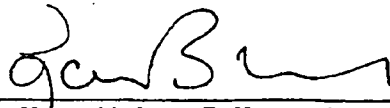
20. The Town of Pawleys Island, S.C., Unified Development Ordinance §2-10.1(2005) allowed all beach walkways to be a maximum of four feet in width. (See "Exhibit A").
21. The Town of Pawleys Island, S.C., Unified Development Ordinance §2-10.1(2005) was the ordinance in effect at the time of the construction of the said walkway, at the time of the application of the Appellants' permit, and at the time of the Appellants' first and second application for variance.
22. The "Pawleys Island Building Permit Procedure", cited to in the Appellant's Memorandum of Law in Support of Motion to Alter or Amend Final Order, is not a Ruling or binding authority.
23. The "Quick Analysis Tutorial", cited in the Appellant's Memorandum of Law in Support of Motion to Alter or Amend Final Order, is not a Ruling or binding Authority.
24. Further, the "Quick Analysis Tutorial" specifically notes that "FOR SPECIFIC GUIDANCE, ALWAYS REFER TO THE UNIFIED DEVELOPMENT ORDINANCE".
25. Ignorance of the law is no defense.
26. The Appellants' construction of the said walkway and request for variances fell under the Town of Pawleys Island, S.C., Unified Development Ordinance §2-10.1(2005), which only allowed for four feet wide walkways landward of the OCRM line.
27. The Appellants use of the secondary sources mentioned above, as reasons for Revised Application Submitted on November 17, 2009 being wrongfully denied, is an insufficient legal authority and an indefensible fault made by the Appellants, whereas stated above ignorance of the law is no defense.
28. The issue of the Zoning Board of Appeals' variance denial is properly denied. The Findings of Fact made by the Zoning Board of Appeals are proper. This Court will not disturb them.

29. The legal issue is whether in November 2009 the Wilkes' Application was properly denied, i.e., did the building department misinterpret the law in November 2009 when the denial of the permit occurred.
30. At the time of both variance applications by the Appellants the Pawleys Island, S.C., Unified Development Ordinance §2-10.1, stated "A structure utilized for the purpose of providing pedestrian access from a residence to the beach. The maximum width of such structure shall not exceed four (4) feet. Construction seaward of the OCRM setback line shall be regulated by that Agency." The Appellants walkway structure or proposed changes in November 2009 did not meet such requirements.
31. The building department did not misinterpret the law in November 2009.
32. The Appellants argue the theory of estoppel, claiming reliance on said secondary sources in constructing their walkway.
33. "He who seeks equity must do equity." Norton v. Matthews, 249 S.C. 71, 152 S.E.2d 680 (1967). Although the Appellants seek equitable relief in their Freedom of Information Act argument. Appellant's have unclean hands in building the walkway without a permit. Their claims under FOIA are denied.
34. The Appellants claim they relied on secondary sources in the construction of their walkway in accordance with those specifications, however the Appellants applied for a permit for construction of walkway, and began and essentially finished construction before any permit was ever issued. Appellants proceeded at their own peril.
35. The applicable Pawleys Island ordinance gives the municipality the authority to regulate walkways exclusively landward of the OCRM setback line. The applicable ordinance in effect in 2009, at the time of said construction, was the Unified Development Ordinance §2-

10.1 (See "Exhibit A"). In November 2009, the applicable ordinance had the same maximum width requirement. The maximum width of pedestrian walkways from the residence to the OCRM setback line is a structure not to exceed four feet in width. The current structure that Appellants have constructed clearly violates the ordinance applicable at the time and, therefore, Appellants' Motion to Alter or Amend Final Order is denied.

IT IS, THEREFORE ORDERED, that the Appellants' Motion to Alter or Amend Final Order is denied and the aforementioned walkway shall be reduced in width to comply with the Town of Pawleys Island Unified Development Ordinance in place at the time of construction. Town of Pawleys Island Uniform Development Ordinance §2-10.1 (See "Exhibit A").

IT IS SO ORDERED.



The Honorable Larry B. Hyman, Jr.
Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

November 7, 2015
December

ORDINANCE NO. 2005-10

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE
ARTICLE II, INTERPRETATIONS AND DEFINITIONS

INTENT

It is the intent of this Ordinance to amend the existing Unified Development Ordinance of the Town of Pawleys Island, so as to add the term "Beach Boardwalk or Walkway" and include it as part of the definition section, as Article 2-10.1.

WHEREAS, it is necessary and advantageous to establish and adopt Ordinances to promote the public health, safety and general welfare of the residents and visitors to the Town, and to minimize any confusion as to the terminology used to define structures located in the Town;

WHEREAS, it is necessary and proper for the general welfare and convenience of the residents and visitors to the Town of Pawleys Island to create cohesive and unified laws for preserving health, peace and order.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF PAWLEYS ISLAND, SOUTH CAROLINA, PURSUANT TO THE SOUTH CAROLINA CODE OF LAWS 1976 (AS AMENDED), THAT:

The existing Unified Development Ordinance of the Town of Pawleys Island, be amended, so as to include the term "Beach Boardwalk or Walkway" to Article II on page 2-1 of the Unified Development Ordinance:

2-10.1 Beach Boardwalk or Walkway: A structure utilized for the purpose of providing pedestrian access from a residence to the beach. The maximum width of such structure shall not exceed four (4) feet. Construction seaward of the OCRM setback line shall be regulated by that Agency.

Adoption of the foregoing Ordinance moved by David Zimmerman and seconded by Mary McAllister and after discussion and call to vote thereon, the vote was as follows:

Those in favor:

Those opposed:

Date of first reading:

November 14, 2005.

Date of second reading:

December 12, 2005.

Endorse 2005-10

APPROVED:

William L. Otis, Jr.
WILLIAM L. OTIS, JR., MAYOR

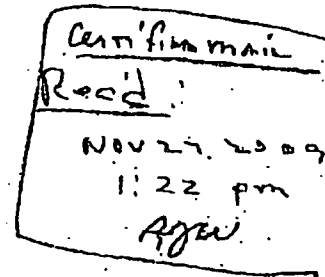
DATE: 12/12/05

ATTEST:

Diane Allen Young
DIANE ALLEN, TOWN CLERK

DATE: 12/12/05

ZONING BOARD OF APPEALS
TOWN OF PAWLEYS ISLAND
P.O. BOX 1818
PAWLEYS ISLAND, SC 29585



IN THE MATTER OF:

ROBERT J. AND PAMELA T. WILKES REQUEST FOR VARIANCE
AT 302 ATLANTIC AVENUE, PAWLEYS ISLAND, SOUTH CAROLINA

FINAL DECISION

THIS MATTER COMES BEFORE the Zoning Board of Appeals on October 13, 2009. Robert Wilkes and Pamela Wilkes have filed an Application for a Variance at 302 Atlantic Avenue, Pawleys Island, South Carolina. The variance that they seek is a variance to a permit six foot (6') wide walkway located at their home at that address.

Present at the call of the case were all of the members of the Zoning Board of Appeals. However, at the outset of the case, John Hart, one of the members of the Zoning Board of Appeals, recused himself in as much as he was the adjacent property owner, and he had a conflict of interest in moving forward or deciding the application. Prior to the start of the case, he recused himself and left the building.

FINDINGS

1. In November of 2008 a building permit was issued for the remodeling for increased living space at the location of 302 Atlantic Avenue, Pawleys Island, for and on behalf of the Wilkes. Some time thereafter in June of 2009, there was a building permit applied for, for a walkway, however, the contractor or subcontractor never requested this building permit, and it was never issued for the construction of a walkway. The contractors and subcontractors proceeded to

complete a six foot (6') walkway at the site until work was stopped by the building inspector in July. Most of the work had already been done at that point. There was a six foot (6') walkway which is a violation of existing Pawleys Island Ordinances. The walkway which was constructed without a permit by the contractor or subcontractor was a six foot (6') walkway which is in violation of a Town Ordinance passed in 2002 which restricted the size of all walkways to four feet (4').

2. At the outset of the hearing, the Zoning Board of Appeals heard from the Town Attorney, N. David DuRant, who appeared on behalf of The Town of Pawleys Island, and it was stated clearly for the record that the Town of Pawleys Island's position was that this was a violation of the existing Ordinances restricting the size of walkways to four feet (4') and that the Town opposed granting a variance in this particular matter and case.
3. Joanne Ochal, Georgetown County Zoning, presented the essential facts to the Appeal Board.
4. After Mr. DuRant's presentation, Robert J. Wilkes was sworn in and testified as to his request for a six foot (6') walkway.
5. Mrs. Pamela T. Wilkes also presented testimony at the hearing.
6. After all of the testimony was presented, and the parties positions made clear to the Board of Appeals, the Board of Appeals deliberated in the open. After deliberations, Sarah Irby, Board Member, made a motion that the variance request be denied. This motion was seconded by Frank Robinson, Board Member.
7. The Motion was discussed, and it was unanimously determined that the request for a variance for a six foot (6') walkway by the Wilkes be denied.

As stated herein above, the Zoning Board of Appeals has determined that Robert J. Wilkes and Pamela T. Wilkes have not met the necessary criteria in which to obtain a variance in this matter, and the Zoning Board of Appeals does hereby unanimously deny their request for a six foot (6') walkway under the facts and circumstances of this case.

Respectfully submitted,


Roger Ward, Chairman
Zoning Board of Appeals
Town of Pawleys Island

Dated: 11-24-09

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Robert and Pamela Wilkes,)

Appellants,)

vs.)

Town of Pawleys Island, South Carolina,)

Respondent.)

Civil Action No. 2009-CP-22-2076

ORDER OF
THE BOARD OF ZONING APPEALS
OF THE TOWN OF
PAWLEYS ISLAND DENYING
VARIANCE REQUEST

FILED
GEORGETOWN COUNTY, S.C.
2012 MAY 24 AM 11:14
ALMA Y WHITE
CLERK OF COURT

DATE OF HEARING:

March 29, 2012

ATTORNEY FOR APPELLANTS:

Joseph Singleton

ATTORNEY FOR RESPONDENT:

N. David DuRant

COURT REPORTER:

Sarah Frye/Advantage Court Reporting

A hearing was held by the Town of Pawleys Island Board of Zoning Appeals on March 29, 2012 at 6:00 P.M. at the Waccamaw Neck Branch Library in the Pawleys Island community of Georgetown County, South Carolina. The purpose of the hearing was to hear the appeal of Robert J. Wilkes and Pamela J. Wilkes (hereinafter, "Appellants") who are requesting a variance for a six-foot wide walkway from the required four-foot walkway ordinance. The property fronts on Atlantic Avenue and the rear property backs up to the ocean. Appellants' property is located at 302 Atlantic Avenue on Pawleys Island.

Present at the hearing was Joseph Singleton, counsel for Appellant, and David DuRant, who represents the Town of Pawleys Island. Evidence was presented at the hearing.

This Appeal is before us pursuant to the Circuit Court's Order filed July 22, 2011. In that Order, the Court remanded this matter and the prior Zoning Board of Appeal Order dated November 24, 2009 denying the variance request, and directed that the Zoning Board of Appeals

take additional testimony and evidence and issue an Order with Findings of Fact and Conclusions of Law and provide a certified copy of that record to the Court. Appellants have requested a variance to Section 2-10.1 of the Uniform Development Ordinance that requires a maximum four-foot wide walkway.

Mr. Wilkes, after being duly sworn, testified that the walkway was built six feet wide as part of the renovation plans for his house. The walkway, according to him, is well constructed and was tied to the renovated stairs for the house. There were separate contractors for the house and the walkway. The walkway was part of the construction plans for the home renovation. The previous walkway was greater than four feet but less than six feet wide.

Mr. Wilkes stated there was a problem with the communication between the contractors. The walkway was never permitted even though a separate permit was required. The contractor did submit an application for the walkway permit, but no permit was ever issued. Mr. Wilkes testified that the building inspector saw the walkway and did not stop the work. At some point a stop work order was issued as to the walkway.

Mr. Wilkes testified that the hardship in this matter is that he will be forced to remove the six foot walkway to bring the walkway into compliance with the ordinance. His particular lot, according to him, is peculiar in that his lot is very long and the walkway stretches a good distance, approximately two hundred eighteen feet, toward the ocean.

Joanne Ochal, for the Town of Pawleys Island, testified that building officials do not check or inspect zoning matters. The walkway required a separate permit from Zoning. While the home renovation was permitted through the building department, the walkway was not permitted. The walkway is a zoning issue and not a building issue and a building official would not stop the work on the walkway. Because a walkway permit was not issued, no zoning

officials inspected the walkway. When the issue of the walkway arose, a stop work order was issued.

On behalf of the Town of Pawleys Island, David DuRant argued that any hardship in this instance was created by the contractors' negligence. According to Mr. DuRant, the contractor should have received a permit prior to constructing the walkway. Instead, the Wilkes are now asking for permission to have a noncompliant walkway. According to Mr. DuRant, the Town of Pawleys Island has consistently maintained that the walkway width requirements must be met.

After reviewing the evidence presented and hearing from the parties and the witnesses, the Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Appellants are owners of the property located at 302 Atlantic Avenue, Pawleys Island, South Carolina.
2. A variance may be granted in an individual case of unnecessary hardship upon a finding by the Board of Zoning Appeals that: (1) there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; (2) the application of the Zoning Regulations for this particular piece of property will create an unnecessary hardship; (3) such conditions that are peculiar to that particular piece of property involved; and (4) relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of the Zoning Regulations with a comprehensive plan.
3. If the Appellants had requested a permit prior to building the walkway, the permit would have been denied. In other words, the six foot walkway would not have been approved prior to it being built. The hardship at this point is that due to the contractor's error in not obtaining a permit, the walkway is now not in compliance with the Unified Development

Ordinance. However, this hardship was caused by the contractor and/or owner's agent and was preventable and self-induced.

4. There are no extraordinary and exceptional conditions that pertain to this particular piece of property. The length of the lot requiring a long walkway to the beach in itself is not extraordinary or exceptional. In addition, the application of the zoning regulations for this piece of property would not create an unnecessary hardship. Any such hardship, as stated earlier, was caused by the failure to obtain a permit for the walkway. Furthermore, there are no peculiar conditions to this particular piece of property. There are many long walkways which are compliant with the ordinance. The Appellants' previous walkway was less than six feet in width.

5. Granting relief and allowing a six foot walkway in this case would cause substantial detriment to the public good and impair the purpose of and intent of the zoning regulations with a comprehensive plan. Although the prior walkway might have been greater than four feet, it was less than six feet. The Unified Development Ordinance has been in effect for several years prior to the renovation of the home, did not permit a six foot walkway and only allowed a four foot walkway. Many other homeowners on Pawleys Island have been required to comply with this four foot walkway requirement.

6. Board members Irby and Robinson moved and seconded that this variance request be denied. Board member Johnson voted against the motion. By vote of two to one, the variance is denied and the walkway shall be reduced to four feet in width and brought into compliance with the Unified Development Ordinance.

IT IS, THEREFORE, ORDERED that the Appellants' request for a variance to Section 2-10.1 to construct a six foot wide walkway is denied and the walkway shall be reduced to four feet in width and brought into compliance with the Unified Development Ordinance.

Pawleys Island Board of Zoning Appeals

By: Frank E. Robinson
Frank E. Robinson, Acting Chairman

ATTEST: Jamie M. Ochal
Building Official

This 3 day of may, 2012.
Pawleys Island, South Carolina

SWORN to before me this the 3rd day of may, 2012.

Judy Evans
Notary Public

My commission expires: 10-12-17

We concur with the above decision unless specifically noted otherwise in the Findings of Fact.

John Hart, Jr. - (Abstain)

Worth Johnson - (Against)

Sara Irby - (For)

DATE MAILED TO ALL PARTIES IN INTEREST: _____

NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS AFTER THE DATE THIS ORDER WAS MAILED

IT IS, THEREFORE, ORDERED that the Appellants' request for a variance to Section 2-10.1 to construct a six foot wide walkway is denied and the walkway shall be reduced to four feet in width and brought into compliance with the Unified Development Ordinance.

Pawleys Island Board of Zoning Appeals

By: _____
Frank E. Robinson, Acting Chairman

ATTEST: _____
_____, Building Official

This _____ day of _____, 2012.
Pawleys Island, South Carolina

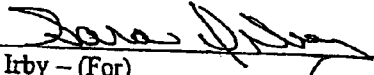
SWORN to before me this the ____ day of _____, 2012.

My commission expires: _____
_____, Notary Public

We concur with the above decision unless specifically noted otherwise in the Findings of Fact.

John Hart, Jr. - (Abstain)

Worth Johnson - (Against)


Sara Irby - (For)

DATE MAILED TO ALL PARTIES IN INTEREST: _____

*****NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS AFTER THE DATE THIS ORDER WAS MAILED*****

IT IS, THEREFORE, ORDERED that the Appellants' request for a variance to Section 2-10.1 to construct a six foot wide walkway is denied and the walkway shall be reduced to four feet in width and brought into compliance with the Unified Development Ordinance.

Pawleys Island Board of Zoning Appeals

By: _____
Frank E. Robinson, Acting Chairman

ATTEST: _____
_____, Building Official

This _____ day of _____, 2012.
Pawleys Island, South Carolina

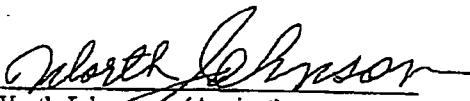
SWORN to before me this the _____ day of _____, 2012.

Notary Public

My commission expires: _____

We concur with the above decision unless specifically noted otherwise in the Findings of Fact.

John Hart, Jr. - (Abstain)


Worth Johnson - (Against)

Sara Irby - (For)

DATE MAILED TO ALL PARTIES IN INTEREST: _____

*****NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS AFTER THE DATE THIS ORDER WAS MAILED*****

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Robert and Pamela Wilkes

Plaintiff(s)

vs.

Town of Pawleys Island, Georgetown County
Planning Commission

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

09-CP - 22- 2076

(Please Print)

Submitted By: Joseph F. Singleton

Address: 1303 Third Avenue

Conway, South Carolina 29526

SC Bar #: 05135

Telephone #: 843-248-4229

Fax #: 843-248-7182

Other:

E-mail: jsingleton@horrylaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

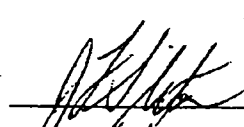
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Notice/ File Med Mal (230) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Other (299) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| | | | <u>Mechanic's Lien foreclosure</u> |
-
- | | | | |
|--|--|---|--|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Habeas Corpus (530) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| ☐ Other (599) | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Other (799) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | | | ☒ Zoning Board (970) |
| | | | ☐ Administrative Law Judge (980) |
| | | | ☐ Public Service Commission (990) |
| | | | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |
-
- | | |
|--|---|
| Special/Complex /Other | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) |
| ☐ Other (699) | ☐ Sexual Predator (510) |

Submitting Party Signature: 

Date: December, 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FC MANDATED ADR COUNTIES ON

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

] IN THE COURT OF COMMON PLEAS
] CIVIL ACTION NO.: 2009-CP-22-2076

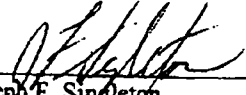
Robert and Pamela Wilkes,
Plaintiff,
-vs-
Town of Pawleys Island, Georgetown
County Planning Commission,
Defendant(s).

SUMMONS
(Appeal from disapproval
of variance request)

TO: The Defendants Above-Named:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at (if by mail) Post Office Box 1244, Conway, South Carolina, 29528, or (if by personal delivery) 1303 Third Avenue, Conway, South Carolina, 29526, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint with the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint.

SINGLETON, BURROUGHS & YOUNG, P.A.


Joseph F. Singleton
Kathryn H. Sligh
1303 Third Avenue
Conway, SC 29526
(843) 248-4229
jsingleton@horrylaw.com
ksligh@horrylaw.com
Attorneys for Plaintiff

Conway, SC
December 18, 2009

FILED
2009 DEC 21 PM 1:53
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

] IN THE COURT OF COMMON PLEAS
] CIVIL ACTION NO.: 2009-CP-22-2076

Robert and Pamela Wilkes,

Plaintiff,

-vs-

Town of Pawleys Island, Georgetown
County Planning Commission,

Defendant(s).

NOTICE OF APPEAL, PETITION,
REQUEST FOR PRE-LITIGATION
MEDIATION, AND COMPLAINT

CLERK OF COURT

2009 DEC 21 PM 1:53

To: Town of Pawleys Island, and David DuRant, Attorney for Town of Pawleys Island, and
Georgetown Planning Commission

NOTICE OF APPEAL AND PETITION

YOU WILL PLEASE TAKE NOTICE that the Appellants, Robert and Pamela Wilkes hereby petition and appeal, pursuant to Section 6-29-820 South Carolina Code of Laws (1976, as amended) and any other applicable section(s) of the South Carolina Local Government Planning Act; Town of Pawleys Island, South Carolina Unified Development Ordinance – Article III., 3-7.6; Georgetown County, Zoning Ordinance Article XIII, 1305; as well as other applicable law from the Decision and Order of the Zoning Board of Appeals for the Town of Pawleys Island denying the Petitioners' request for a variance dated November 24, 2009 and received by the Petitioner by Certified Mail on November 27, 2009.

In support of this appeal and petition, the Plaintiffs submit the following:

1. Robert and Pamela Wilkes (referred to hereinafter as the Plaintiffs) are individuals who own real property located within the Town of Pawleys Island, and County of Georgetown, South Carolina, at 302 Atlantic Avenue, Pawleys Island, South Carolina.
2. The Plaintiffs constructed a walkway to provide pedestrian access from the residence to

the beach.

3. The Plaintiffs applied for a building permit on June 25, 2009. Subsequently, the construction of the walkway proceeded as set forth in their engineered drawings of the walkway; accordingly the walkway is approximately Two Hundred and Thirteen (213) feet long and six (6) feet wide.
4. After the construction of the walkway was complete, the Plaintiffs were informed by Town officials that the walkway was in violation of the Town Ordinances due to width of the walkway exceeding the four (4) feet permitted by Town Ordinance.
5. The Plaintiffs were informed by Town officials that a fine of \$500.00 per diem had been accruing for the alleged violation since June 25, 2009.
6. The Plaintiffs submitted a variance request to the Zoning Board of Appeals for the Town of Pawleys Island on or about August 28, 2009.
7. At the October 13, 2009 the Zoning Board of Appeals Hearing, the Board heard Plaintiff's request for a variance.
8. The Zoning Board of Appeals issued its decision on November 24, 2009, denying Plaintiff's request for a variance.
9. The decision of the Town of Pawleys Island Zoning Board of Appeals violates the rights of the Plaintiffs, violates the Town of Pawleys Island Unified Development Ordinance, and Section 6-29-800 of the South Carolina Code of Laws.
10. The hearing conducted by Town of Pawleys Island Zoning Board of Appeals failed to provide a meaningful hearing by failing to address, consider, and make the requisite findings for the denial or grant of a variance as required by Town Ordinance and State Law.

11. That the Board erred as a matter of law by not fulfilling its statutory mandate requiring that written findings and explanations be made for the granting or denial of a variance as set forth in S.C. Code Ann. § 6-29-800(2)(a)-(d).
12. That the Board erred as a matter of law by not separately stating all findings of fact and conclusions of law as required by Unified Development Ordinance, Article III, 7.5(B).
13. That the Board erred as a matter of law by not adhering to the procedural requirements of the Zoning Regulations contained in the Unified Development Ordinance, Article III, 7.5(B) and (C).
14. That the record is devoid of sufficient evidence to support the Board's findings of fact and final decision, and the record is thus insufficient for review.
15. That the Board's decision is based on surmise, speculation and innuendo and is arbitrary and capricious.
16. That Plaintiffs are entitled to costs associated with this action pursuant to S.C. Code Ann. § 6-29-840 (2003).

REQUEST FOR PRE-LITIGATION MEDIATION

17. Pursuant to S.C. Code Ann. § 6-29-825 (2003), the Plaintiffs hereby request pre-litigation mediation of this controversy.

COMPLAINT FOR DECLARATORY RELIEF

18. Plaintiffs are property owners within the Town of Pawleys Island, Georgetown County, South Carolina.
19. The allegations set forth in the introduction to this document and the preceding paragraphs are hereby incorporated by reference.
20. The Plaintiffs are informed and believe that they are entitled to a declaratory judgment;

pursuant to S.C. Code Ann. § 15-53-30, declaring:

- a. That the Plaintiffs are entitled to approval of the constructed walkway by the Town of Pawleys Island, Zoning Board of Appeals, and the Georgetown Planning Commission.
- b. That Plaintiffs' walkway is not in violation of the current Town Ordinances, as the Plaintiffs have submitted an application to construct benches on the walkway which is allowable pursuant to the terms of the General Comments No. 5, of the UDO Tutorial, incorporated by reference into the Town Ordinances.
- c. That the fines imposed by the Town for the alleged violations are null and void, and thus unenforceable.
- d. Alternatively, that the fines imposed by the Town for the alleged violations are stayed as of the date of filing the appeal to the Town of Pawleys Island Zoning Board of Appeals until the resolution of this matter.
- e. That Plaintiffs are entitled to costs associated with this action pursuant to S.C. Code Ann. § 6-29-840 (2003).

EQUITABLE ESTOPPEL

21. The allegations set forth in the introduction to this document and the preceding paragraphs are hereby incorporated by reference.
22. The Town's conduct precludes the assertion that the Plaintiffs' walkway is in violation of the Town Ordinances.
23. Several other residential lots within the Town and on the beach front have walkways with widths in excess of four (4) feet, and these walkways were constructed after 2002.
24. The Plaintiffs submitted a building permit application that included an engineer's

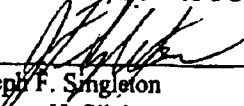
- drawing of the walkway to be constructed with a width of six (6) feet.
25. That during the construction of the walkway and the remodeling of the residence, Georgetown County code enforcement inspected the renovations, and Town officials were aware of the construction taking place.
 26. That, in good faith, Plaintiffs relied on the representations of the Town officials that the construction was not in violation of the Town or County Ordinances.
 27. That, in good faith, Plaintiffs relied on the information set forth in the Town's Zoning Ordinance, including the UDO Tutorial, in constructing the walkway.
 28. That, in good faith, Plaintiffs relied on the specifications set forth in the DHEC - Ocean and Coastal Resource Management (OCRM) Critical Area Permitting Regulations, 30-15(A), and Georgetown County Zoning Ordinances, Art. IV., 415.
 29. That only after the structure was fully completed, did Town officials inform Plaintiffs of the alleged violation and demand the walkway's removal.
 30. To their detriment Plaintiffs justifiably relied on the representations and conduct of the Town.
 31. Those despite repeated attempts to resolve the purported conflict and reach some sort of compromise with Town officials the Plaintiffs have reached an impasse with the Defendants.

WHEREFORE, the Plaintiffs, Robert and Pamela Wilkes, respectfully request:

- A. This matter be mediated pursuant to S.C. Code Ann. § 6-29-825;
- B. In the event mediation proves unsuccessful, that this Honorable Court enter its Order consistent with the following:

- a. That the Board erred as a matter of law by not granting the Plaintiffs' appeal due to its failure to address, consider, and make the requisite written findings relating to the grant or denial of a variance as required by local and state law;
- b. That the Board failed to establish a record sufficient to support its findings and decision;
- c. That the record is thus insufficient for review, and the Plaintiff is entitled to present additional evidence not set forth in the record on appeal;
- d. That the decision of the Town of Pawleys Island Zoning Board of Appeals denying the requested variance is set aside;
- e. That the relief requested as set forth in the Complaint for Declaratory Relief is granted;
- f. That the Town be estopped from asserting the Plaintiff's walkway is in violation of the Town zoning ordinance;
- g. That Plaintiffs are entitled to costs associated with this action pursuant to S.C. Code Ann. § 6-29-840; and
- h. For such other and further relief as this Court deems just and proper.

SINGLETON, BURROUGHS & YOUNG, P.A.



Joseph F. Singleton
Kathryn H. Sligh
Attorneys for Plaintiff
PO Drawer 1244
Conway SC 29528-1244
(843) 248-4229
jsingleton@horrylaw.com
ksligh@horrylaw.com

18 day of December, 2009
Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

Robert and Pamela Wilkes,
☒ Plaintiff

CASE NO.: 2009-CP-22-2076

v.

Town of Pawleys Island, Georgetown County
Planning Commission.

☐ Defendant

check box above indicating submitting party.

MOTION INFORMATION FORM
AND COVER SHEET

Name, S.C. Bar no. and address of plaintiff's attorney

Joseph F. Singleton S.C. Bar # 05135
P.O. Drawer 1244
Conway, SC 29528
Telephone: (843) 248-4229 Fax: 843-248-7182
E-mail: ksligh@hornylaw.com Other:

Name, S.C. Bar no. and address of defendant's attorney

David Durant S.C. Bar #
Post Office Box 14722
Surfside Beach, South Carolina 29587
Telephone: (843) 650-7800 Fax: (843) 650-8090
E-mail: daviddurant@sc.rr.com Other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Alter or Amend Order [TO BE HEARD BY JUDGE HYMAN]

Estimated Time Needed: 30 minutes Court Reported Needed: ☒ YES ☐ NO

SECTION II: Motion Type

☒ Written Motion attached

☐ Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

12-31-14
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

(Check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy ☐ Motion for Execution (Rule 69, SCRPC)
☐ Motion for Publication
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: S. Patton
(print name)

DATE FILED

1-7-15

☐ MOTION FEE COLLECTED: \$ 25.00

☐ CONTESTED - AMOUNT DUE:

SCCA/233 (1/2003)

FILED
FOR GEORGETOWN COUNTY, S.C.
2015 JAN -7 A 8:45
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Robert and Pamela Wilkes,

Appellants,

-vs-

Town of Pawleys Island, Georgetown
County Planning Commission,

Respondents.

] IN THE COURT OF COMMON PLEAS
] CIVIL ACTION NO.: 2009-CP-22-2076

**MOTION TO ALTER OR
AMEND ORDER**

FILED
GEORGETOWN COUNTY, S.C.
2015 JAN -7 A 8:45
ALMA Y. WHITE
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the Appellants, Robert and Pamela Wilkes, through the undersigned attorney, will move before the Honorable Larry B. Hyman, Jr. for an Order pursuant to SCRCP 59(e) altering or amending the judgment in this action recorded December 18, 2014 ruling in favor of the Town of Pawleys Island, South Carolina.

This Motion will be made on the grounds that the Order referred to hereinabove failed to address or rule on the following issues raised by the Appellants in this case:

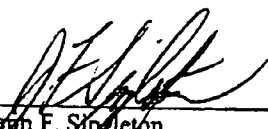
1. Whether the revised application submitted on November 17, 2009 with engineered plans showing a 2-foot wide bench installed on one side of the walkway and also a set of drawings showing handrails moved in two feet to reduce the width of the walkway from 6 to 4 should have been allowed inasmuch as that application and plan was in compliance with the zoning of the Town of Pawleys Island as of the date it was submitted. (The Town having passed a new ordinance on December 7, 2009 redefining the walkway width definition as well as removing the 6-foot wide walkway allowance from the "quick analysis tutorial" on the Town's website.)

2. The Appellants' equitable defenses of equitable estoppel based upon the Town's conduct and the Appellants' good faith reliance on representations and conduct from the part of the Town arising out of the language on the Town's website allowing 6-foot wide walkways and actions and conduct of the Building Inspector during Appellants' construction of the walkway.

3. Appellants' issue raised as to violation by the Board of Zoning Appeals of the South Carolina Freedom of Information Act.

It is respectfully submitted that the Court should alter and/or amend its Order, give consideration to and specifically rule on the issues referred to hereinabove, and other issues raised in the proceedings not ruled on by the Court.

SINGLETON, BURROUGHS & YOUNG, P.A.



Joseph F. Singleton
Attorney for Appellants
Post Office Drawer 1244
1303 Third Avenue
Conway, South Carolina 29528-1244
(843) 248-4229
jsingleton@horrylaw.com

31 day of Dec., 2014.
Conway, South Carolina.

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF GEORGETOWN) CASE NO: 2009-CP-22-2076
3 -----

4 B E F O R E: The Honorable Larry B. Hyman
5 November 6, 2014
6 -----

7 ROBERT & PAMELA WILKES,
8 Plaintiffs,
9 vs.

10 TOWN OF PAWLEY'S ISLAND, et al.,
11 Defendants.
12 -----

13 APPEARANCES:

14 Joseph Singleton, Esq.
15 For the Plaintiffs.

16
17 N. David DuRant, Esq.
18 For the Defendants.
19
20
21
22
23
24
25

 ORIGINAL

1 house, I believe, in '08 and they went about
2 remodeling it. Of course they did something a little
3 different. They wanted to put it back the way it was
4 when it was built in about 1950, I think. But they
5 got the -- went to the building inspector, planning
6 and zoning office, got a contractor. They got a
7 building permit to do the work on the house itself.

8 During -- toward the end of the work of the
9 house, March of 2009, the building inspector issued a
10 stop-work order. They were concerned about the front
11 and back steps and porch area. I think the
12 construction materials had kind of degraded to where
13 they had to go back and replace the deck, the steps on
14 both sides of the house. They were all tied into the
15 walkway going out to the beach, so that required them
16 to build a new walkway to the beach.

17 They submitted a building permit application,
18 which included the walkway and the deck, June 25th of
19 2009, and they finished the work on the house. It was
20 approved the end of June, and they finished the
21 walkway substantially in July sometime.

22 THE COURT: Of '09?

23 MR. SINGLETON: '09. They utilized a separate
24 contractor for the walkway. Through miscommunication
25 between him and the other contractor and the building

1 inspector's office, he never pulled the permit,
2 although the engineered plans were filed for the
3 6-foot walkway. At that point, the Town issued
4 another stop-work order and told them they would have
5 to tear the walkway down because it was 6 feet width,
6 and that the walkway width had been a few years
7 earlier narrowed to 4-foot width. This is in your
8 material, when they applied for the permit the first
9 time, the actual permit application form, it says
10 "Building Permit Procedures," it talks about the
11 procedure and you needed to complete a checklist.
12 This is all on their UDO quick tutorial online. So
13 they were directed by the building office when they
14 were doing the initial planning to go online and look
15 at the tutorial.

16 The tutorial online provides that beach walkways,
17 gazebos, decks and all -- that says something about
18 seaboard of the line. Walkways from dwelling may be
19 expanded with benches not to exceed 6 feet wide, but
20 landward with OCRM -- they refer to their code
21 regulations.

22 THE COURT: What does that mean?

23 MR. SINGLETON: They can make it 6 feet, but if
24 they had a 2-foot-wide bench, they had a 4-foot
25 walking area.

1 So they filed an application. . They already built
2 the walk. They filed the application to put a bench
3 down -- they had a bench in a certain portion, but to
4 put the bench all the way down the walkway which would
5 reduce the actual walkway's effective area to 4 feet.
6 They initially didn't act on that at all. Then they
7 advised it was denied. In the meantime, in December
8 of 2009, they amended their zoning ordinance and took
9 out this stuff or changed the stuff about you could
10 have it 6 feet wide as long as you had the walkway.

11 So --

12 THE COURT: Bench? As long as you had the bench?

13 MR. SINGLETON: The seating.

14 THE COURT: Yeah.

15 MR. SINGLETON: So all the way through here they
16 tried to do a reasonable accommodation because they
17 didn't intentionally get in this situation, and it
18 would be a hardship to tear the 200-foot walk down and
19 rebuild it as a 4-foot walkway. Not only would it be
20 very expensive, but then they would be damaging the
21 sand dunes, bothering the neighbors, just a real
22 expense.

23 We tried mediation and whatever to reach some
24 accommodation. It wouldn't affect the Town as to
25 future -- now the ordinance has been changed, so it

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

2 COUNTY OF GEORGETOWN) CASE NO: 2009-CP-22-2076

3 -----
4
5 B E F O R E: The Honorable Larry B. Hyman
6 October 12, 2015
7 -----

8 ROBERT & PAMELA WILKES,

9 Plaintiffs,

10 vs.

11 TOWN OF PAWLEY'S ISLAND, et al.,

12 Defendants.
13 -----

14 APPEARANCES:

15 Kathryn Sligh, Esq.
16 Brandon Reeser, Esq.
17 For the Plaintiffs.

18 N. David DuRant, Esq.
19 Natale Fata, Esq.
20 For the Defendants.

21
22
23 Official Court Reporter
24 Natalie Dahl, RPR
25

1 side of the house, and when they were doing the
2 renovation on the interior, the steps that tied into
3 the deck and into the walkway, that all had to be torn
4 down. So in connection with rebuilding the stairs and
5 the deck, the walkway was constructed.

6 THE COURT: It was like 175 feet, something like
7 that?

8 MS. SLIGH: Yes, sir.

9 THE COURT: Something like that, some distance.

10 MS. SLIGH: I think it may have been 200 feet, in
11 that range.

12 THE COURT: I don't think that makes any
13 difference, it was just a long walkway.

14 MS. SLIGH: Yes, sir.

15 THE COURT: And there were all sorts of attempts
16 later to get a variance, like putting benches on the
17 side and things of that nature, right?

18 MS. SLIGH: Correct. There was a variance that
19 was applied for, and then there was a second actual
20 building permit application that was filed, and that
21 was filed on November 17, 2009. In January of 2010,
22 we got a formal letter from Mr. DuRant, the town's
23 attorney, saying that the request was denied along
24 with the appeal under the first application submitted.
25 So they were treating all of that as part and parcel.

1 At the time the November application was submitted, it
2 was well within the purview of the zoning ordinance to
3 allow the 2-foot benches. It wasn't until December 7,
4 2009 that it was amended to close that provision where
5 you could install benches the entire length of the
6 walkway.

7 THE COURT: When was the construction done?

8 MS. SLIGH: The construction was done in 2009.
9 March 19, 2009 is when the stop-work order was issued,
10 so the bulk of this all happened in the mid- to late
11 2009.

12 THE COURT: All right. And this is the one that
13 I sent back, asked you to -- the zoning board and
14 everyone to meet again to see if something could be
15 done. That did not work out?

16 MS. SLIGH: Correct. We had two mediations. The
17 first was scheduled with Mike Smith and the -- Mr. and
18 Mrs. Wilkes were there and then the attorneys, but no
19 one from the town showed up in person. They appeared
20 by phone. After that, it came back before you and was
21 remanded for mandatory mediation to comply with the
22 statute, and Bob Calamari conducted the second
23 mediation. We reached an impasse at that point.
24 Mr. Wilkes and Mrs. Wilkes have submitted a request
25 for a permit to -- with the installation of the

1 benches as well as a permit for moving in the sides of
2 the railing to reduce --

3 THE COURT: I recall the case. Now, tell me,
4 upon what grounds do you move for a reconsideration of
5 the order that I issued?

6 MS. SLIGH: Well, in the order that was filed on
7 December 18, 2014, there were several points that
8 weren't specifically addressed, and we would like the
9 Court to make a ruling on those. Specifically the
10 application that was filed on November 17 of 2009 with
11 the benches, which would have been permissible under
12 the ordinance at that time asking the Court to
13 consider that, and consider that there was no grounds
14 for them -- for the town or the zoning officials to
15 deny that permit.

16 THE COURT: Let me ask you this. When was the
17 first permit issued -- I mean, let me rephrase that.
18 When did you make application? I know you started in
19 March or May of -- was it May of 2009; is that right?

20 MS. SLIGH: Well, in November of 2008 was when
21 the permits to do the remodeling on the actual home
22 and stairs, all of that was done.

23 THE COURT: But that didn't involve building the
24 walkway, did it?

25 MS. SLIGH: The application was submitted, but it

1 structures allowed seaward of the baseline that do not
2 require an OCRM permit.

3 THE COURT: I mean, you don't doubt that the city
4 can be more restrictive -- I mean the town can be more
5 restrictive than OCRM or DHEC. I mean, they can do
6 that, can't they?

7 MS. SLIGH: Yes, sir.

8 THE COURT: I mean, the OCRM -- it doesn't tell
9 me where the OCRM baseline is, and that part that you
10 pointed out to me said that there can be wider ones
11 landward. I don't know where it is. Can you tell me
12 where the baseline is?

13 MS. SLIGH: No, Your Honor. If I may confirm
14 with Mr. Reeser?

15 THE COURT: Okay.

16 (A brief pause in the proceedings.)

17 MS. SLIGH: The middle of the dune back towards
18 the house.

19 THE COURT: You are saying that's where it is?
20 You know, this came before me as a matter of an appeal
21 of the zoning board for the city of -- or Town of
22 Pawley's Island. I'm bound by their findings of fact.
23 Tell me, talk to me about an error of law committed by
24 the board in reaching its decisions. Isn't that all I
25 can consider?

1 MS. SLIGH: With regard to the permitting issue,
2 yes, you are bound by the legal error. I do believe
3 that the failure to grant the permit that was
4 submitted in November of 2009 with the 2-foot benches
5 was denied as an error of law because of the governing
6 law in effect at that time provided for benches of
7 that width, the run of the entire walkway. In
8 fact --

9 THE COURT: What you are referring to is what you
10 pointed out just a moment ago, which is essentially
11 that was -- that was from a --

12 MS. SLIGH: Quick analysis tutorial.

13 THE COURT: Yeah.

14 MS. SLIGH: Yes, sir.

15 THE COURT: Taylor, am I looking at a town
16 ordinance, or DHEC?

17 LAW CLERK: DHEC.

18 THE COURT: You referred me a moment ago as an
19 authority to 30-15, which is a DHEC OCRM regulation;
20 is it not?

21 MS. SLIGH: Correct.

22 THE COURT: And that regulation said that
23 walkways no larger in width than 6 feet are the only
24 structures allowed seaward of the baseline -- you say
25 baseline is in the middle of the dunes -- that do not

1 THE COURT: Let me look at it. It says -- I'm
2 looking at an ordinance first reading, second reading
3 were October and December of 2009. It is approved by
4 the mayor December 7th of 2009. What it does is it
5 says, Now, therefore, let it be ordained by the mayor
6 and council of the Town of Pawley's Island, South
7 Carolina, pursuant to the South Carolina Code of Laws,
8 1976 amended, that Pawley's Island Permit Procedure
9 Handbook, Page 11, general contents, Item 5, second
10 sentence shall read as follows: Beach walkways, only
11 one per dwelling. A maximum width of such structure
12 shall not exceed 4 feet, with the exception that a
13 6-foot long section landward of OCRM baseline may be
14 expanded with benches not to exceed 6 feet.

15 Okay. That is what I've been looking for. It
16 says for a 6-foot long section you can have a section
17 6-feet wide for benches. Okay.

18 Now, what did it say before that?

19 MS. SLIGH: The page prior, just before the page
20 you are reading, Paragraph 5 of that.

21 THE COURT: All right. Let me back up to that.
22 It says, Beach walkway, gazebos and decks are allowed
23 seaward of the Town's shore protection line, but
24 landward of the OCRM setback unless allowed by OCRM.
25 specifically on Springs Avenue, beach walkways, only

1 one per dwelling, may be expanded with benches not to
2 exceed 6-feet wide, but landward of the OCRM baseline.

3 Okay. Gentlemen, that seems to be what this
4 ordinance was. The ordinance originally says, Beach
5 walkway landward of the baseline or setback line could
6 be 6 feet, expanded with benches to 6-feet wide
7 landward of the line. The statute was clarified in
8 December to say you can have 6 feet, but that 6 feet
9 can only be 6 feet in length; is that right? Is that
10 what it seems to say?

11 MR. DuRANT: I think it is, Your Honor. What we
12 have is a situation where there is a vague tutorial
13 reference that she's referred to in Paragraph No. 5,
14 and the ordinance that was passed just from what I'm
15 hearing from the questions of the Court and from
16 counsel, ordinance was passed to clarify what the Town
17 of Pawley's Island allows landward of the OCRM line.
18 I don't know where that line is because it would take
19 a survey to go out there and find it and put it on a
20 map, but it may include part -- I don't think it
21 includes all of the deck, but it may include part of
22 the deck. I think that the ordinance is not
23 inconsistent with the UDO. I think it is just
24 clarifying what the Town's position is going forward
25 with the UDO.

1 hoped you guys were going to say, We have it worked
2 out. That is what I was hoping, you know.

3 But this is what I'm faced with now. We come
4 back with an order, and the zoning board makes a
5 factual finding that this situation does not meet the
6 criteria factually for a variance. Extraordinarily
7 exceptional conditions based on the size, shape and
8 topography of the land. Application of the regulation
9 for this particular property will create an undo
10 hardship. Conditions of this particular property, if
11 granted, would cause substantial detriment to the
12 public good. It makes findings. I'm bound by those
13 findings. I'm bound by the findings of the zoning
14 board that a variance is not appropriate. So where am
15 I with this thing now?

16 MR. FATA: I would submit that the findings
17 complied with and followed and interpreted the statute
18 or ordinance 2-10-1, and the board members didn't feel
19 they could go beyond what the ordinance required,
20 which was a 4-foot-wide maximum, and that is why the
21 vote was what it was and why the variance request was
22 denied.

23 THE COURT: Where I'm at now is this -- the only
24 wiggle room I have is this -- that there was some type
25 of application made in November of 2009 prior to the

1 time that the ordinance -- the tutorial or whatever --
2 it was changed to reflect that 6-foot width for
3 benches could only exceed 6-foot long, okay.

4 Did the zoning board commit an error of law by
5 saying that that particular provision did not exist,
6 did not apply, could not be used in this case? That
7 is where I'm at now. Did they commit an error of law?
8 Variance, as far as I'm concerned, the idea of a
9 variance is over. I want to talk about whether or not
10 they applied the appropriate ordinance when
11 considering whatever was applied for in November of
12 2009. Tell me about it.

13 MR. REESER: Brandon Reeser on behalf of the
14 appellant. We don't deny that Section 2-10.1 existed.
15 It is in the definition section of the Universal
16 Development Code. Whenever you get a permit for a
17 walkway, you have to go to Section 2.3 -- 2-3.6. When
18 you do that, it says if you want a permit, you have to
19 fill out this worksheet. That worksheet is that
20 language there that says you can have a 4-foot walkway
21 with an extended 2 feet of benches, you can have a
22 6-foot-wide walkway.

23 The entire time through the hearings -- and we
24 have references to the hearing transcripts -- everyone
25 is taking the position that that portion is not an

1 ordinance, it doesn't apply, yet the town is going to
2 amend an ordinance, but it is not an ordinance itself.
3 It is kind of disingenuous. What they do in these
4 hearings is they apply 2-10.1, and that's it. They
5 call it a day. They say this is the scope of what
6 we're going to apply, and that simply is not true.
7 Even by the Unified Development Code, it is clear that
8 both 2-10.1 applies, and this worksheet, which has to
9 be signed by a member of the Pawley's Island
10 Development Commission. This is part of getting a
11 walkway on Pawley's Island in the code. It has been
12 amended by ordinance, by the town. It applies.

13 If the Board of Zoning Appeals wants to avoid it,
14 that is fine, but we think it is improper. The town
15 has told the appellants the whole time 2-10.1 is the
16 only thing that applies.

17 THE COURT: That is the only thing actually in
18 the ordinance?

19 MR. REESER: No, Your Honor, this is clearly an
20 ordinance.

21 THE COURT: What is?

22 MR. REESER: The worksheet section allows your
23 2-foot extension.

24 THE COURT: Is that adopted anywhere as part of
25 the ordinance?

1 MR. REESER: 2-6.2.

2 THE COURT: 2-6.2 is....

3 MR. REESER: I apologize, 3-6.2A.

4 THE COURT: I'm looking at the wrong thing.

5 MR. REESER: I'll represent to the Court that the
6 worksheet and 2-10.1 have been amended so they read
7 the same thing. Whenever you read the ordinance
8 change from December of 2009, that is now how 2-10.1
9 reads. The town wants to be consistent between both,
10 but they only want one to apply. If you comply with
11 the code, you've got to go through these steps. If
12 that is not an ordinance or a law, Your Honor, I'm not
13 sure what is.

14 THE COURT: What did you file in November of
15 2009?

16 MR. REESER: A permit application, Your Honor.
17 To build a 6-foot-wide walkway, 2 feet of that width,
18 a bench all the way down.

19 THE COURT: You filed not a variance, but a
20 permit application?

21 MR. REESER: Yes, sir. That was the second
22 permit application after the stop order was issued.

23 THE COURT: What was the first one?

24 MR. REESER: 6-foot walkway and built --
25 partially built. Georgetown County came in and did

1 their inspections, and Pawley's Island put a stop
2 order after it was mostly put up.

3 MR. DuRANT: I've never seen a permit application
4 requiring that, and it is not in the record, as far as
5 I know. I will look at it, but....

6 THE COURT: Do you have a copy of your
7 application filed in November?

8 MS. SLIGH: I cannot put my hands on the actual
9 application, but I have a letter from JoAnn Ocho from
10 May 14, 2010.

11 THE COURT: No, I'm talking about the one in
12 November.

13 MS. SLIGH: This is the response from that
14 application.

15 THE COURT: All right. That was 2010.

16 MS. SLIGH: I want to confirm a couple of
17 conversations we had regarding Robert Wilkes' property
18 located at 302 Atlantic Avenue, Pawley's Island.
19 Mr. Wilkes submitted revised drawings on November 11,
20 2009 regarding the walkway located at the above
21 address. The drawing as submitted did not meet Code
22 Section 2-10.1 of the Unified Development Ordinance
23 for the Town of Pawley's Island. November 23, 2009, I
24 verbally indicated that I was disproving the plans as
25 submitted.

1 Then there was also a letter prior to that from
2 the town's attorney, Mr. DuRant, and we sent him a
3 letter on December 21, 2009 after we got the verbal
4 denial from Ms. Ocho. He said, Please be advised that
5 the Wilkes' application for variance has already been
6 denied by the Zoning Board of Appeals. It is my
7 understanding you appealed that decision; therefore,
8 the zoning application you forwarded to Mr. Power --
9 which was the application with the benches -- will not
10 be processed. By copy of this communication, I'm
11 forwarding the letter to the Town of Pawley's Island
12 clerk, as well to the building inspector of Georgetown
13 County advising them to return any checks to your
14 office regarding this matter.

15 So he attached the decision denying the variance
16 request.

17 THE COURT: What is that dated?

18 MS. SLIGH: That's dated January 5, 2010, so they
19 applied for it November 17, 2009.

20 THE COURT: That says something for a variance.
21 Did they apply for a permit and variance?

22 MS. SLIGH: Yes.

23 THE COURT: Both at the same time?

24 MS. SLIGH: Yes, sir, my understanding.

25 THE COURT: Did they acknowledge then that only a

1 4-foot -- by asking for a variance, did they
2 acknowledge that the ordinance limited them to 4 feet?

3 MS. SLIGH: The decision of the -- this is an
4 application for the variance and it has the reasons
5 for appeal of zoning building official.

6 Decision: The decision of the building official
7 is inconsistent with the zoning ordinances and
8 information disseminated by the Town of Pawley's
9 Island related to the permitted width of the
10 boardwalk, specifically and documented a quick
11 analysis tutorial found on the Town's Website. A copy
12 is attached.

13 So we set out our reasons for the request and the
14 plans for the benches.

15 THE COURT: What was the reason given then for
16 the denial?

17 MS. SLIGH: According to JoAnn Ocho, is that it
18 did not comply with 2-10.1, which is in the definition
19 section and says that boardwalks are limited to
20 4 feet. She did not address the corresponding
21 ordinance that deals with the expansion of the
22 boardwalk with the benches.

23 So she limited her decision to one part of the
24 governing ordinance without taking into consideration
25 the other part, which is equally applicable.

1 THE COURT: What happened on May 3, 2012? What
2 does that say?

3 MS. SLIGH: That order is a denial of the
4 application that was first submitted -- denial of both
5 applications.

6 THE COURT: That were submitted back in November?

7 MS. SLIGH: November, and the previous one that
8 was submitted back in August 2009.

9 THE COURT: Did the order address whether or not
10 they had applied the amended statute -- ordinance or
11 the old ordinance?

12 MS. SLIGH: It did not. It did not address which
13 ordinance it was applying.

14 THE COURT: It didn't say?

15 MS. SLIGH: No, sir.

16 MR. FATA: If I may be heard? I'm unaware of the
17 November plan supplemental being addressed by the
18 Zoning Board of Appeals in May of 2012. I don't know
19 that that was part of the record, that November plan
20 submission or any corresponding letters.

21 THE COURT: Was there any one later submitted?
22 I'm wondering, you know, do we have -- if there wasn't
23 one submitted later by the fall, it's the one in
24 November.

25 MR. FATA: The only variance requested that I'm

**ZONING BOARD OF APPEALS
TOWN OF PAWLEYS ISLAND
P.O. BOX 1818
PAWLEYS ISLAND, S.C. 29585**

Verbatim Transcript of Meeting
Public Library Pawleys Island
October 13, 2009
6:00 p.m.

Attending:

Joanne Ochal, Georgetown County Zoning
Roger Ward, Chairman
Sarah Irby, Board Member
Frank Robinson, Board Member
John Hart, Board Member
David DuRant, attorney for Pawleys Island

At issue before the board:

Property owner: Barbara Barton
Location: 107 Shell Road, Pawleys Island
Requested variance: Six foot walkway

Property owner: Robert J. and Pamela T. Wilkes
Location: 302 Atlantic Avenue, Pawleys Island
Requested Variance: Side and rear yard setback

**ADVANTAGE COURT REPORTING
OF MYRTLE BEACH
7201 Enterprise Road, Myrtle Beach, S.C. 29588
650-6263**

Sunny Faye

1 *Wilkes hearing commenced at 6:22 p.m.:*

2 CHAIRMAN WARD: Okay. And the next case is -
3 - would be Robert and Pamela Wilkes, 302 Atlantic
4 Avenue, and can you tell us something about ...

5 MS. OCHAL: The Wilkes at 302 Atlantic Avenue
6 requesting a variance to permit a six foot wide walkway.
7 The house is currently a single family home that exists on
8 the property, and they recently have done some
9 renovations and expanded the livable area on the back of
10 the house. Code section two dash ten dash one states
11 beach boardwalks or walkways, structures utilized for the
12 purpose ...

13 MR. DuRANT: Speak up a little bit. It's hard to
14 hear you.

15 MS. OCHAL: ... of providing pedestrian access from
16 the residence to the beach, the minimum width of such
17 structure shall not exceed four feet. Construction of the
18 OCRM setback shall be regulated by the agency. The
19 Code also references cabanas gazebos as a single open
20 deck, not to exceed two hundred square feet. The
21 walkway is complete, and is approximately two hundred
22 and ten feet in length and six feet in width, and there is an
23 open area or cabana, gazebo area, of a hundred and forty-
24 four square feet. Just a little background on it. In
25 November of 2008, a permit, a building permit, was issued

1 can't -- obviously there may be something that you can
2 do to compromise at a later date. But it ain't going to get
3 solved here tonight. This committee's got to rule on your
4 request for a Zoning Board of Appeals variance in this
5 particular situation. And obviously, that's not going to -- I
6 can't resolve that tonight. They've got to do a yes or no
7 vote on the appeal, basically at this point.

8 CHAIRMAN WARD: Roger Ward. I do
9 sympathize with you. I know what you're going through.
10 I've had a similar situation myself, too. But you did not
11 have a permit, number one. Number two, you're six feet,
12 and it should be four, no more than four. You're just -- I
13 believe you're in one of those situations where, if we were
14 to grant this, there might be another fifty people come in
15 tomorrow that want to go to six feet. The laws here, you
16 can't do it. The policy is four feet.

17 MS. IRBY: Sarah Irby. I make a motion that we do
18 not accept the variance.

19 MR. DuRANT: That you deny?

20 MS. IRBY: Do not give a variance.

21 MR. ROBINSON: I'm going to second it, but I'm
22 going to say that it's a very hard situation, and I think our
23 hands are tied. I think that -- you know, I'm going to
24 encourage -- you know, this has nothing to do with this,
25 but I encourage you to continue to enjoy your house and

**ZONING BOARD OF APPEALS
TOWN OF PAWLEYS ISLAND
P.O. BOX 1818**

PAWLEYS ISLAND, S.C. 29585

Verbatim Transcript of Meeting

Public Library Pawleys Island

March 29, 2012

6:00 p.m.

Attending:

Sarah Irby, Board Member

Frank Robinson, Board Member

John Hart, Board Member

Worth Johnson, Board Member

2009-CP-22-02076

Joanne Ochal, Georgetown County Zoning

Appearances of Counsel:

For Board

Nate Fata, Esquire

For Pawleys Island

N. David DuRant, Esquire

For Wilkes:

Joseph Singleton, Esquire

Kathryn Sligh, Esquire

At issue before the board:

Property owner:

Robert J. & Pamela Wilkes

Location:

302 Atlantic Avenue

Variance:

To allow a 6 foot wide walkway
(rehearing)

Property Owner:

Henrietta Miller & H. Gerald Joiner

Location:

215 Atlantic Avenue

Variance:

15 foot rear yard setback and
10 foot side yard setback.

Property Owner:

Lawrence E. Holliday

326 Myrtle Avenue

To permit an 8 foot tall fence

ALMA Y. WHITE
CLERK OF COURT

2012 JUN -7 PM 2:38

FILED
GEORGETOWN COUNTY, S.C.

**ADVANTAGE COURT REPORTING
OF MYRTLE BEACH**

7201 Enterprise Road, Myrtle Beach, S.C. 29588

650-6263

1 you.

2 MS. SLIGH: Sorry. Thank you for waiting.

3 MR. SINGLETON: Good thing it's not the judge sitting
4 up there. She might really be in trouble. (TO MS. SLIGH)
5 You need to sign in. And I'm not sure procedurally how you
6 do it. Do you normally have the Town go first, and then the
7 appellant go, or which way do you normally handle it
8 procedurally?

9 MR. DuRANT: Actually, what happens is, Ms. Ochal,
10 from Georgetown County, represents the City of Pawleys
11 Island, and she will present the city's position, and then y'all go
12 after that.

13 JOANNE OCHAL: Good evening. This is a request from
14 Robert and Pamela Wilkes of 302 Atlantic Avenue in Pawleys
15 Island for a variance to permit a six foot tall fence. This is a
16 rehearing of a case that was originally heard on October 13th,
17 2009. A little update on why they are back here. The
18 applicant appealed to the Board of Zoning Appeals on October
19 13th, 2009, to the Circuit Court on June 28th, 2011. The court
20 ruled on this appeal, stating that the mediation should take
21 place between the parties involved, and if unsuccessful, the
22 case needs to go back before the Board, with the stipulation
23 that they address all four criteria necessary to grant a variance.
24 Nothing has changed to the walkway at all. The judge
25 required mediation to occur with all parties involved. Two

1 mediation sessions were scheduled, and no settlement was
2 reached. The judge stated if this mediation was not successful,
3 they had to come back here. I'm just going to go over some of
4 the things that the ZBA, when you address the variance.
5 Section 3-7.5 goes through the rules. It says -- states that a
6 variance may be granted in such an individual case of
7 unnecessary hardship upon finding by the Board of Appeals
8 that there are extraordinary and exceptional conditions
9 pertaining to a particular piece of property in question because
10 of its size, shape, and topography. The application of the
11 zoning regulation on this particular piece of property would
12 create an unnecessary hardship. Such conditions are peculiar
13 to this particular piece of property involved, and relief, if
14 granted, would not cause substantial detriment to the public
15 good or impair the purpose and the intent of the zoning
16 regulations or the comprehensive plan, provided, however, that
17 no variance be granted for the use of a land or building or
18 structure as prohibited in a given district. As of March 15th,
19 2012, the applicant has not submitted any additional
20 information. Just to reference the code, Section 2-10-1 states,
21 "Beach walks or walkways, a structure utilized for the purpose
22 of providing pedestrian access from a residence to the beach.
23 The maximum width of such a structure shall not exceed four
24 feet." Code section 2-16 refers to cabanas and gazebos in a
25 single open deck, not exceeding two hundred square feet, nor a

1 height of twelve feet. The walkway is complete. It's
2 approximately two hundred and ten feet in length, and six feet
3 wide. The walkway contains an open deck approximately a
4 hundred and forty-four square feet. The use of the property is
5 not restricted. These restrictions are imposed on all properties
6 of the Town of Pawleys Island. And I can answer any
7 questions.

8 BOARD MEMBER ROBINSON: Are we dealing simply
9 with the walkway, or is there any -- you mentioned a gazebo.
10 Is there any ...

11 MS. OCHAL: The gazebo is in -- it's within the
12 regulations, so the gazebo's fine. It is the walkway that is in
13 question.

14 MR. WILKES: We don't have a gazebo.

15 MS. OCHAL: You have -- I should say you have a bump-
16 out, yeah, that's a hundred and forty-four square feet.

17 BOARD MEMBER ROBINSON: Okay. Well, I guess
18 we'd like to hear the applicant now.

19 MR. SINGLETON: Mr. Chairman, I do have some
20 pictures and stuff to bring down there.

21 BOARD MEMBER ROBINSON: Thank you.
22 (INAUDIBLE)

23 BOARD MEMBER IRBY: You're out of luck.

24 MR. SINGLETON: Well, I don't know if you want to
25 take a minute to look through this, or -- and this may help, at

1 width to four feet.

2 BOARD MEMBER ROBINSON: Anything else?

3 MR. SINGLETON: No, sir.

4 MS. SLIGH: I would like to make just one point. There
5 was an amendment to the ordinances in December of 2009,
6 after the Wilkeses submitted the request, showing the two foot
7 wide benches along the six foot wide deck. The amendment
8 clarified that you could only have these benches in a six foot
9 section. So our position is that these two foot benches that we
10 proposed prior to December of 2009 would have been -- or
11 were in compliance, based on our interpretation of that
12 ordinance. And I think that the fact that there was an
13 amendment adding language, or clarifying language, or
14 changing language after that shows that -- or is indicative of
15 the fact that our proposal was in compliance.

16 BOARD MEMBER IRBY: Is that in the ordinance?

17 MS. OCHAL: The ordinance is what I stated in the report,
18 is that they described it as four foot wide. I think what she's
19 talking about is probably the tutorial that was in part of the
20 ordinance that stated that you could put six foot wide benches,
21 I believe. I don't have a copy of the tutorial.

22 MR. SINGLETON: We've got it in the language ...

23 MS. OCHAL: It's in here, I think.

24 MR. SINGLETON: ... thing we handed out, on the third
25 page. It's in the box. And this is what they saw on the

1 internet, on the website, that's not there now, because the
2 Town has corrected this problem. You know, and it just says,
3 "Beach walkways, gazebos and decks are allowed seaward of
4 the shoreline protection line but landward of the OCRM
5 setback. Beach walkways (INAUDIBLE) with dwelling may
6 be expanded with benches, not to exceed six foot wide,
7 landward of OCRM baseline." Now, I don't think you're
8 stretching it to interpret that to say your walkway you have can
9 be six feet wide, if there's a -- you know, a bench. And that's -
10 - you know, that's what we proposed. And so that would bring
11 us into compliance with what we believe the law was at the
12 time we built that. It wouldn't open the door to people in the
13 future building one that way, because the Town has -- after we
14 raised this issue, they've changed that and clarified that. So we
15 feel like that that -- reasonably interpreting that means that the
16 bench can -- the walkway can be six feet wide, if there's a
17 bench. And we would certainly be glad to go back and add a
18 bench down the whole length, two foot wide. Then the actual
19 area that you could walk on would be four feet. And it would
20 seem to me that would bring it into compliance with the
21 requirement.

22 MR. DuRANT: We just disagree with that, because that's
23 not a part of the ordinance. That was not a part of the
24 ordinance at the time. And quite frankly, as I indicated to you
25 before, this problem wasn't created by the Town. This



SINGLETON, BURROUGHS & YOUNG, P.A.

ATTORNEYS AT LAW

October 9, 2015

Email: lhymanlc@sccourts.org; lhymanj@sccourts.org
Honorable Larry B. Hyman, Jr.
Presiding Judge
Georgetown Clerk of Court
P. O. Box 421270
Georgetown, SC 29442

RE: Robert and Pamela Wilkes vs. Town of Pawley's Island and Georgetown County
Planning Commission; C/A No.: 2009-CP-22-2076
Our File No.: 09-0401

Dear Judge Hyman:

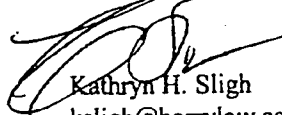
Enclosed herewith is a copy of Appellant's Memorandum of Law in Support of Motion to Alter or Amend Final Order.

I have also copied opposing counsel with this correspondence and enclosures.

With kind regards, I remain

Yours very truly,

SINGLETON, BURROUGHS & YOUNG, P.A.


Kathryn H. Sligh
ksligh@horrylaw.com

Enclosures

cc: David DuRant, Esquire via email
Nate Fata, Esquire via email
Bob Wilkes

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION NO.: 2009-CP-22-2076

Robert and Pamela Wilkes,)
Appellants,) **APPELLANTS' MEMORANDUM**
Vs.) **OF LAW IN SUPPORT OF MOTION**
Town of Pawleys Island, Georgetown) **TO ALTER OR AMEND FINAL**
County Planning Commission,) **ORDER**
Respondents.)

**TO: DAVID NORWOOD DuRANT, ESQ., AND NATALE FATA, ESQ.,
ATTORNEYS FOR THE TOWN OF PAWLEYS ISLAND AND THE
GEORGETOWN COUNTY PLANNING COMMISSION:**

COMES NOW Robert and Pamela Wilkes (hereinafter "Appellants"),
submitting the following Memorandum of Law in Support of its *Motion to Alter or
Amend* the Court's Final Order upholding the Town of Pawleys Island Zoning Board
of Appeals' decision to deny Appellants a Variance to continue use of their zoning
compliant walkway.

BRIEF PROCEDURAL BACKGROUND

Robert and Pamela Wilkes (referred to hereinafter as the Appellants) own real
property located within the Town of Pawleys Island, and County of Georgetown, at
302 Atlantic Avenue, Pawleys Island, South Carolina. Appellants in conjunction with
extensive remodeling of the residence they constructed a walkway to provide
pedestrian access from the residence to the beach. Appellants applied for a building
permit on June 25, 2009. The walkway was constructed as set forth in their engineered
drawings. Thereafter, Appellants were informed their walkway exceeded the
permissible width provided for in the Town's zoning ordinance.

Appellants submitted a variance request to the Zoning Board of Appeals for the

Town of Pawleys Island on or about August 28, 2009. At the October 13, 2009 the Zoning Board of Appeals Hearing, the Board heard Appellants' request for a variance, and issued its decision on November 24, 2009, denying Appellants' request.

Prior to the Board's written decision, Appellants submitted a revised building permit application on November 17, 2009 to Town of Pawleys and then to Georgetown County Planning, showing benches on the walkway which would reduce the effective width from six (6) to four (4) feet which was permitted under the governing ordinances in effect.

Georgetown County Planning Department notified Appellants' counsel by phone that the application with benches was denied, and on the following day, December 15, 2009 Appellants' counsel wrote Georgetown Planning requesting information and written decision on Appellants' application with benches. On December 21, 2009, Appellants filed an appeal of the permit denial to the Zoning Board of Appeals. On January 5, 2010, the Town's attorney forwarded the Zoning Board of Appeals Order denying the initial variance request stating the ruling was intended as a denial of the first and second applications as they were treated as the same thing.

Appellants filed a *Notice of Appeal, Petition, Request for Pre-litigation Mediation, and Complaint* on December 21, 2009, appealing the November 24, 2009 *Decision and Order of the Zoning Board of Appeals*.

Honorable Larry B. Hyman, Jr. on June 28, 2011, issued an *Order Remanding Case for Mediation and Rehearing for Findings of Fact and Conclusions of Law* dated July 20, 2011 and filed July 22, 2011. The Order reversed the decision of the Zoning Board of Appeals and remanded the matter for mediation, and if mediation proved unsuccessful, the Zoning Board of Appeals was to rehear the matter, take additional testimony and evidence, and issue an order with separately stated findings

of fact and conclusions of law. Judge Hyman also retained jurisdiction to hear any matters connected with this action. A rehearing of Appellants' variance request was held on March 29, 2012, before the Zoning Board of Appeals, and the decision issued on May 3, 2012, denying Appellants' request.

Appellants filed *Notice of Appeal from Remand Hearing, Supplemental Petition, and Supplemental Complaint* on June 20, 2012 appealing the May 3, 2012 *Final Decision and Order of the Zoning Board of Appeals*. The June 20, 2012 appeal was heard before Honorable Larry B. Hyman, Jr. on November 6, 2014, culminating in a *Final Order* filed December 18, 2014, affirming the Zoning Board of Appeals decision. Appellants filed a *Motion to Alter or Amend Order* on January 7, 2015, which is presently before the Court.

LEGAL ANALYSIS

I. Respondents Should be Estopped from Denying Appellants a Variance.

The Court's Order does not address the argument presented as to whether the Town should be estopped from denying Appellants a variance to continue use of their walkway as constructed.¹ A party claiming estoppel must demonstrate that; (1) the relying party was unaware and did not have access to the truth as to the facts in question; (2) the party relied on the conduct of the estopped party; and (3) the party took action that constitutes a prejudicial change of position. *Id.* at 495.

In this matter, Appellants verified the applicable zoning regulations implemented and published by the Town. Specifically, Section 2-10.1 of the Unified Development Ordinance, as enforced in 2009, permitted all beach walkways to be four

¹ While "estoppel will not lie against a governmental body for unauthorized acts of its officers and agents," it is uncontroverted that the Zoning Board of Appeals was acting within the scope of its

feet in width. Town of Pawleys Island, S.C., Unified Development Ordinance, § 2-10.1 (2008). To comply with the Unified Development Ordinance by permitting their walkway, Appellants then consulted Section 3-6.2(A), which provides that:

Prior to making application for a building permit, the applicant shall complete a UDO checklist and secure a signed review by a designated member of the Pawleys Island Planning Commission. This information is available from the town clerk.

Town of Pawleys Island, Unified Development Code, § 3-6.2(A) (2015) (emphasis added)

Appellants were also presented with a "Pawley's Island Building Permit Procedure" which outlined the permitting procedure instructed them to obtain and complete a UDO Checklist Exhibit and the Unified Development Ordinance – A Quick Tutorial document. A copy of which is attached hereto as Exhibit A.

Appellants then properly obtained the Quick Analysis Tutorial from the Town (a copy of which is attached hereto as Exhibit B), which stated the following with regard to beach walkways:

Beach Walkways (only one per dwelling) may be expanded with benches not to exceed 6 feet wide but landward of the OCRM baseline.
¶ 5, General Comments.

Section 2-10.1 allowed for four (4) foot wide walkways; the Town's mandatory UDO checklist allowed for six (6) foot wide walkways as long as two feet of width is composed of benches. As provided in photographs to the Board and on file with the Court, there are numerous six (6) foot wide walkways and numerous walkways with long, built-in benches. Appellants therefore developed a six-foot-wide walkway of which two feet of width is composed of benches.

authority when denying Appellant's variance request. Abbeville Arms v. City of Abbeville, 273 S.C. 491, 492-93, 257 S.E.2d 716, 718 (1989); S.C. Code Ann. §6-29-800 (1976).

The Town asserts that the UDO Quick Analysis Tutorial is not a part of the Town's applicable zoning regulations in that its text is not actually located within Section 2-10.1. See, Bd. of Zoning App. (Hr'g. Tr., p. 18, March 29, 2012). However, on December 7, 2009, the Town passed Ordinance No. 2009-16, attached as Exhibit C, which expressly amends the UDO Tutorial:

Beach Walkways (only one per dwelling). The Maximum width of such structure shall not exceed four (4') feet with the exception that a six (6') foot long section landward of the OCRM baseline may be expanded with benches not to exceed six (6') feet wide.

Town of Pawleys Island, S.C., Ordinance 2009-16 (Dec. 7, 2009).

An ordinance is, by definition, a law. It is disingenuous of the Town to contend that the Permit Procedure Handout and Tutorial is not part of the Town's zoning regulations; it is created under Section 3-6.2(A) of the Unified Development Ordinance, it has been openly amended by the Town via ordinance, and the Town has expressed a clear and unambiguous intent to enforce the UDO tutorial's terms. Town of Pawleys Island, S.C., Ordinance 2009-16 (Dec. 7, 2009) ("[a]ll other portions of the Pawleys Island Permit Procedure Handout are to remain in effect."). Indeed, the Town has since amended the UDO checklist and Section 2-10.1 such that they are both the same. See Town of Pawleys Island, S.C., Unified Development Ordinance, § 2-10.1(A) (2015); Town of Pawleys Island, S.C., Ordinance 2009-16 (Dec. 7, 2009). There would be no reason to do so if Section 2-10.1 was enforceable and the UDO tutorial was not.

There is no dispute that the Town publishes, maintains, and edits the tutorial and procedure handout through the passage of ordinances, and that ordinances have the force of law. Any builder, homeowner, or contractor who wants to perform work on a walkway within the Town of Pawleys Island must comply with the UDO

procedures and tutorial. Section 2-10.1 allowed for four-foot-wide walkways; the Town's mandatory UDO checklist allowed six (6) foot wide walkways as long as two feet of width is composed of benches. It is clear that Appellants could not have appreciated the contradictory requirements of constructing their walkway.

Appellants relied on all published zoning regulations to govern all renovation of their back deck and construction of their walkway. Those regulations included the Town's mandatory UDO checklist and tutorial, the zoning regulations of Georgetown County, attached as Exhibit D, and OCRM regulations, attached as Exhibit E. Multiple inspections of the walkway by Town and Georgetown County officials took place during construction without a single zoning violation report. It was only after Appellants spent \$25,000-\$30,000 toward the construction of the new walkway that the Town decided to force Appellants to stop their work. If Appellants are forced to remove and replace their walkway, their expenditures will not be recoverable. Thus such action clearly demonstrates a prejudicial change of position.

Appellants complied with all applicable zoning regulations during design and construction. Appellants were forced to spend thousands of dollars renovating their deck and walkway using allegedly inaccurate information they were required to review and comply with. Appellants were then issued a stop order only after a majority of the work had been inspected and completed but before benches could have been added. Because the essential elements of estoppel are clearly present, the Town should be estopped from denying Appellants' variance.

II. Appellants' Have a Vested Right in the Continued Use of their Walkway.

Additionally, the Court's Order does not address that, under long-established South Carolina law, Appellants have a right to continue use of their walkway

regardless of whether a permit was issued to them under the vested rights doctrine. "A landowner acquires a vested right to continue a nonconforming use already in existence at the time his property is zoned in the absence of a showing that the continuance of the use would constitute a detriment to the public health, safety, or welfare." F.B.R. Invs. v. Cnty. of Charleston, 303 S.C. 524, 527, 402 S.E.2d 189, 191 (1991)(citing Friarsgate, Inc. v. Town of Irmo, 290 S.C. 524, 527, 349 S.E.2d 891, 892-893 (Ct.App. 1986); R. Anderson, American Law of Zoning 3d, Section 6.23 (1986)); Lake Francis Properties v. City of Charleston, 349 S.C. 188, 123, 561 S.E.2d 627, 630 (Ct.App 2002) (citing Whaley v. Dorchester Cnty. Bd. of Zoning App., 337 S.C. 568, 578-579, 524 S.E.2d 404, 409-10 (1999); Daniels v. Cty. of Goose Creek, 314 S.C. 494, 497, 431 S.E.2d 256, 258 (Ct.App. 1993)).

Appellants relied on then-existing zoning regulations passed and enforced by the Town. While the Town may now disapprove of such widths, the Town waited until five months after it issued a stop order on Appellant's property and after Appellants applied for a permit before it made any changes to the UDO tutorial. In these circumstances, Appellants are entitled to continue the use of their walkway undisturbed by the Town unless the town can demonstrate how the existence of a six-foot wide walkway in compliance with the UDO checklist threatens the "health, safety, or welfare" of the public body of the Town of Pawleys Island. 303 S.C. at 527, 402 S.E.2d at 191. The Town has not and cannot make such a showing.

The Town contends, that Appellants' failure to procure a permit in this case renders their cause defective. However, it has long been held in our Courts that when a permit is properly applied for under an existing regulation, the landowner's rights in the use of that property are protected in the same manner as if the permit had in fact been issued. Pure Oil Division v. City of Columbia, 254 S.C. 28, 34, 173 S.E.2d 140,

143 (1970). "In both instances [application of permit and issuance of permit], the right protected is the same, that is, the good faith reliance by the owner of the right to use his property as permitted under the Zoning Ordinance in force at the time of the application for a permit." In this case, permit procurement is immaterial; under the law of South Carolina, Appellants' rights are protected regardless. The Pure Oil Division Court went even further, holding that "[a permit's] issuance could not be legally denied, even under a subsequently enacted ordinance prohibiting such use, so as to deprive the owner of the vested rights acquired." 254 S.C. at 34, 173 S.E.2d at 143 (citing Kerr v. Cty. of Columbia, 232 S.C. 405, 102 S.E.2d 364 (1970)).

In this case, Appellants applied for a permit in 2009 to construct a walkway in compliance with the UDO tutorial and checklist with which they must comply under Section 3-6.2 of the Unified Development Ordinance. Construction of the walkway began at the cost of \$25,000-\$30,000. The Town issued a stop order in July 2009, after a majority of the walkway was substantially completed. The Town made no changes to its applicable zoning regulations until it passed its December 7, 2009 ordinance editing the language of the UDO checklist. Under Pure Oil Division, the original permit issuance could not have been legally denied, as it would have deprived Appellants of their rights to construct and use a walkway in compliance with the Town's then-existing zoning restrictions. 254 S.C. at 34. Therefore, under Pure Oil Division, Appellants' failure to procure a permit does nothing to alter their rights to continue their use of the six-foot walkway under the vested rights doctrine, and they are thus entitled to a variance to continue using their walkway.

III. Appellants' Revised Application Submitted on November 17, 2009 Wrongfully Denied.

The *Final Order* filed December 18, 2014 did not address whether the revised application submitted on November 17, 2009 with engineered plans showing a 2-foot wide bench installed on one side of the walkway, as well as, a set of drawings showing handrails moved in two feet to reduce the width of the walkway from 6 to 4 feet, should have been allowed inasmuch as that application and plan was in compliance with the zoning of the Town of Pawleys Island as of the date it was submitted.

The Town passed a new ordinance on December 7, 2009 redefining the walkway width definition, as well as, removing the 6-foot wide walkway allowance from the "quick analysis tutorial" on the Town's website. Prior to that time, the Unified Development Ordinance permitted that beach boardwalks or walkways may be expanded from a width of four (4) feet as provided for in Section 2-10.1, to a width of six (6) feet by the installation of benches per the "Quick Analysis Tutorial" incorporated into the Town's ordinances by reference.

On November 17, 2009 when the revised application was submitted the installation of benches along a six (6) foot wide walkway was clearly within the permissible zoning ordinances. However, the Appellant's application was unjustifiably denied and the appeal therefrom was also denied without justification.

The *Final Order* filed December 18, 2014, does not address this issue raised in the Appellants' *Notice of Appeal from Remand Hearing, Supplemental Petition, and Supplemental Complaint* filed June 20, 2012. Appellants are requesting the Court amend its decision to address this issue and grant the Appellants application to

construct the proposed 2-foot wide bench along the length of the walkway in compliance with the ordinances in effect at the time of the application.

IV. The Zoning Board of Appeals Violated the South Carolina Freedom of Information Act.

On March 29, 2012 the Town of Pawleys Island Board of Zoning Appeals held a rehearing of Petitioner's variance request as ordered by Honorable Larry B. Hyman, Jr. As a result of that hearing, on May 3, 2012, the Board issued its decision denying Petitioner's requested relief.

Appellants filed a Notice of Appeal from Remand Hearing, Supplemental Petition, and Supplemental Complaint on June 20, 2012. Appellants pled a violation of the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-15, et. seq. (1976, as amended). The Final Order filed December 18, 2014 did not address the Appellants' FOIA cause of action, and they respectfully request the Court address this issue on the merits.

In connection with the May 3, 2012 decision rendered from the March 29, 2012 hearing, the Board erred as a matter of law by not adhering to the procedural requirements regarding public meetings as set forth in the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-15, et. seq. (1976, as amended). At the March 29, 2012 rehearing, the Board went into executive session prior to voting on the requested variance and without stating the specific purpose for doing so or providing a description of the matter to be discussed in executive session.

The hearing transcript reflects that following testimony from Appellant Wilkes, the Board's attorney asked if the arguments were concluded. Thereafter, the acting Board chair asked if the Board wanted to go into executive session, and inquired if a motion to do was necessary. The Board's attorney suggested the Board

adjourn for executive session, and the Board took a recess. (Hr'g Tr. 25:2-9, Mar. 29, 2012). Upon resumption of the hearing, the Board chairman asked if anyone else wanted to add anything, and asked for a motion to approve or disapprove the application. (Tr. 25:11:13).

Section 30-4-70(b) of the South Carolina Code, provides that “[b]efore going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, ‘specific purpose’ means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section.”²

The South Carolina Supreme Court has held that an announcement that the purpose of an executive session was the discussion of a “proposed contractual matter” did not satisfy the specific purpose requirement and violated FOIA. Donahue v. City of North August, 412 S.C. 526, 773 S.E.2d 140 (2015). FOIA is clear in its mandate that the “specific purpose” of the session “shall be announced” and the specificity requirement is not met by giving the public “some idea” of what “might” be discussed in private. Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (2001).

In Brock v. Town of Mount Pleasant, 411 S.C. 106, 767 S.E.2d 203, (Ct. App. 2014), the Court of Appeals, agreed that the town violated FOIA’s specific purpose provision by failing to announce the specific purpose of its executive session. In Brock, prior to entering an executive session, it was announced that town council intended to discuss legal and contractual matters pertaining to certain property

² S.C. Code § 30-4-70(a) (1)-(5), enumerates the specific reasons a public bodies may hold a closed meeting, including but not limited to discussion of employment, compensation, discipline, negotiations

litigation and to also discuss personnel matters pertaining to boards and commissions.

Id. Upon reconvening the town council meeting a vote was taken approve the settlement agreement discussed in executive session and to authorize the transfer of funds for a town project. Id. The Court reasoned that although the town announced it would obtain legal advice in executive session, that announcement did not comply with the specificity required and thus violated Section 30-4-70(b).

The statute is clear and unambiguous in its language that the presiding officer "shall" announce the "specific purpose" of the executive session. S.C. Code Ann. § 30-4-70(b) (1976). In the case before the Court, no purpose of the executive session was announced, specific or otherwise. In the cases cited, the appellate courts addressed the level of specificity in the announcements made leading up to executive session. Here, the Board chairman asked if the Board wanted to go into executive session without any announcement or description on an applicable "special purpose" as required under applicable law. The Board's attorney merely stated, "I think go in executive session." (Tr. 25:7, Mar. 29, 2012). The meeting was adjourned and the Board entered executive session.

This conduct is in contravention to the clear language and express purpose of FOIA and Section 30-4-70(b). The Board's failure to state a purpose for the executive session is more than a technical violation given the purpose of the statute, and fails to meet the letter or the spirit of the law. Accordingly, Appellants are entitled to equitable relief as this Court finds appropriate and an award of attorney's fees under S.C. Code Ann. § 30-4-15, et. seq. (1976, as amended).

Appellants submit that the vote taken by the Board should be invalidated in

incident to contractual arrangements and property conveyances, legal advice related to actual or threatened claims and other matters subject to the attorney-client privilege.

accordance with this Court's power to fashion appropriate equitable relief. "Upon finding a violation of the Act, the trial court may order equitable relief as it considers appropriate, and a violation of the statute must be considered to be an irreparable injury for which no adequate remedy at law exists." S.C. Code Ann. § 30-4-100(a); Piedmont Public Service Dist. v. Cowart, 319 S.C. 124, 131, 459 S.E.2d 876, 880 (Ct. App. 1995). In Piedmont, the Court of Appeals upheld the equitable relief granted in the form of invalidation of a vote that was improperly taken in executive session. Id. The South Carolina Supreme Court has specifically upheld orders invalidating ordinances and granting injunctive relief along with other forms of equitable relief. See, Business License Opposition Committee v. Sumter County, 311 S.C. 24, 426 S.E.2d 745 (1992); Burton v. York County Sheriff's Dept., 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004).

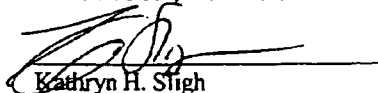
Given the present posture of this action, the presence of clear FOIA violations, and the presumption of irreparable harm to the Appellants, invalidating the Board's decision issued May 3, 2012 and granting attorney's fees is reasonable and appropriate equitable relief well within the power of this Honorable Court.

CONCLUSION

For the reasons under the applicable law of South Carolina so stated and discussed above, Appellants' Motion to Alter or Amend should be granted.

Respectfully submitted,

SINGLETON, BURROUGHS & YOUNG, PA


Kathryn H. Stigh
Attorney for Appellants
1303 Third Avenue
Conway, SC 29526

October 9, 2015
Conway, South Carolina

Pawley's Island Building Permit Procedure

To initiate the Building Permit procedure, please obtain and complete a UDO Checklist. These forms are available from The Pawley's Island Town Hall . Also available are copies of "Voluntary Architectural Guidelines" and "Unified Development Ordinance- A Quick Tutorial" which will be helpful as you plan your project.

After completing the Checklist please bring or Fax it to the Town Clerk. She will assist you in setting up a meeting with a representative of the Planning Commission for review. The purpose of this review is to avoid compliance errors which could be costly to correct after construction has begun and to encourage using the "Voluntary Architectural Guidelines" in planning the project.

The Checklist is then taken to the office of the Georgetown County Zoning Administrator for processing and permit issuance.

Town Clerk Telephone 843-237-1698
Fax 843-237-7083

Zoning Administrator 843-545-3129

I acknowledge receipt of the Building Permit Procedure and the documents referred to.

Owner/Agent Donni Dow

Date 11-06-07

A Quick Analysis Tutorial

UDO References are in [brackets]:

1. Determine the lot width:

From a plat of the property, measure the width of the lot at right angles to its depth at the building setback line, which is 20 feet from the front street property line. Refer to Diagram [2 - 54.6].

2. Calculate the side setbacks:

- A. For lots over 60.0 ft. wide at the building setback line, refer to [3 - 2.2].

$\{(\text{Lot width} - 60.0) \times 0.2\} + 10.0 = \underline{\hspace{2cm}}$ ft. The maximum side setback is 20.0 ft. for lot widths equal to and greater than 110 ft.

- B. For lots under 60.0 ft. wide at the building setback line and designated "Lot of Record," refer to [3 - 5.1]. See examples.

3. Calculate the impervious surface coverage allowable on the lot (1,000 sq. ft. to 4,000 sq. ft.):

Lot area $\times 0.40 = \underline{\hspace{2cm}}$ sq. ft. Refer to [3 - 5.8 (A)]: This shall not limit lot coverage to less than 1,000 sq. ft. nor allow lot coverage to exceed 4,000 sq. ft. See examples.

4. Calculate the heated square feet living area allowable for the dwelling (2,000 sq. ft. to 4,000 sq. ft.):

Lot area $\times 0.40 = \underline{\hspace{2cm}}$ sq. ft. Refer to [3 - 5.8 (B)]: This shall not limit the enclosed living space of a principal structure to less than 2,000 sq. ft. nor allow such living space to exceed 4,000 sq. ft. See examples.

5. For "Additions and Renovations" projects?

- A. Obtain as-built plat and the following data:

(1) Existing heated square feet for each living area floor level.

- (2) Existing impervious square feet for roof coverage; existing impervious square feet for covered porches; existing impervious square feet for paved driveways; existing impervious square feet for solid patios; existing impervious square feet for "closed" decks; existing impervious square feet for covered gazebos; and impervious square feet of other existing impervious materials covering the lot area.

- B. Determine the allowable impervious surface which could result from an expansion project:

Item 3 calculation (minus) Item 5 A (2) (total of all existing impervious surface coverage) = square feet of "additional" impervious surface allowable

Note: A concrete slab directly under the dwelling and inside the drip line is not included as another impervious surface.

- C. Determine the allowable increase in heated area which could result from an expansion project:

Item 4 calculation (minus) Item 5 A (1) (combined total of all heated floor areas) = square feet of "additional" heated living area allowable

6. For "new construction" projects?

- A. Determine the allowable footprint for new construction:

$[\text{Lot width} - (2 \times \text{side setback})] \times [\text{lot depth} - \text{front setback} - \text{rear setback}] =$
square feet of allowable footprint based on lot constraints

Note: In cases where a lot abuts the salt marsh, the "OCRM Critical Line" as drawn by a Land Surveyor minus 10.0 feet forms that side of the buildable envelope. In cases where a lot abuts the beach, the Town's Shore Protection Line forms that side of the buildable envelope.

- B. Determine the allowable impervious surfaces on the lot:

Item 3 calculation (minus) allowable design footprint = all other impervious surfaces available for solid decks, paved driveway, swimming pool, gazebo, etc.

Note: A concrete slab directly under the dwelling and inside the drip line is not included as another impervious surface.

Example No. 1 : Lot 60 ft. by 300 ft.

Heated Area Allowable is 60-ft. x 300 ft. or 18,000 sq. ft. x 40% allowable heated space = 7,200 sq. ft. This figure is greater than the maximum 4,000 sq. ft. of heated space allowable on all floors, so the maximum applies; i.e., 4,000 sq. ft.

Impervious Surfaces Allowable is also the maximum allowable 4,000 sq. ft. of lot coverage including the building footprint (excludes concrete below the roof drip line), covered gazebo, closed decks, paved driveway, solid patios or walkways, and like impervious surfaces.

Setbacks Required Assuming the lot width at the building front (always the street side) is also 60 feet (not always, or even often, the case!), the side setbacks required would be 10 ft., the rear setback would be 15 ft., and the front setback would be 20 ft. If the rear lot line is in the salt marsh, the rear setback would be 10 ft. from the OCRM Critical Line as established by a Land Surveyor from a delineation performed by OCRM within the last 3 years. See [2 - 73]. If the lot abuts the beach, the Town's survey established Shore Protection Line or the survey established OCRM Setback Line, whichever is further west, would establish the eastward most setback line.

There is an exception for street front setbacks where adjoining lots have existing houses closer to the line than allowed. See [3 - 5.3].

Example No. 2 : Lot 50 ft. by 90 ft. and deemed a "lot of record."

Heated Area Allowable is 50 ft. x 90 ft. or 4,500 sq. ft. x 40% allowable heated space = 1,800 sq. ft. This figure is less than the minimum 2,000 sq. ft. of heated space allowable on all floors, so the minimum applies; i.e., 2,000 sq. ft.

Impervious Surfaces Allowable is 50 ft x 90 ft. or 4,500 sq. ft. x 40% allowable lot coverage = 1,800 sq. ft. of lot coverage including the building footprint (excludes concrete below the roof drip line), covered gazebo, closed decks, paved driveway, solid patios or walkways, and like impervious surfaces. So up to a combined total of 1,800 sq. ft. applies, since this figure is greater than the 1,000 sq. ft. minimum allowable.

Setbacks Required Assuming the lot width at the building front (always the street side) is also 50 feet (not always, or even often, the case!), the side setbacks required would be 7 ft. [3 - 5.1(A)], the rear setback would be 15 ft., and the front setback would be 20 ft. If the rear lot line is in the salt marsh, the rear setback would be 10 ft. from the OCRM Critical Line as established by a Land Surveyor from a delineation performed by OCRM within the last 3 years. See [2 - 73]. If the lot abuts the beach, the Town's survey established Shore Protection Line or the survey established OCRM Setback Line, whichever is further west, would establish the eastward most setback line.

There is an exception for street front setbacks where adjoining lots have existing houses closer to the line than allowed. See [3 - 5.3].

General Comments:

1. Less than a 10-ft. setback also requires exterior wall fire protection on that particular side, measured from building wall having an overhang projection. Refer to [3 - 5.1(B)].

2. All setbacks are measured from the roof overhang, including gutters. Refer to [3 - 5.1(A)].
3. An "As-Built" Plat is required to ensure that a building complies with the existing zoning setback lines and to prevent non-conforming structures from being constructed and receiving certificates of occupancy.
4. Setback encroachments are allowed for sidewalks, beach walkways, air conditioning condensing units or heat pumps (on elevated stands), on-grade patios, fences, pavement, and signs, provided that vision clearances are maintained. Refer to [2 - 15.4]; [3 - 5.7]; and [3 - 3.4].
5. Beach walkways, gazebos, and decks are allowed seaward of the Town's Shore Protection Line but landward of the OCRM Setback (unless allowed by OCRM specifically on Springs Avenue). Beach walkways (only one per dwelling) may be expanded with benches not to exceed 6 feet wide but landward of the OCRM Baseline. Refer to [6 - 1.3(A)], [6 - 1.3(B)1)], and OCRM Regulations.

NOTE: FOR SPECIFIC GUIDANCE, ALWAYS REFER TO THE
UNIFIED DEVELOPMENT ORDINANCE.

Pawleys Island, South Carolina, Code of Ordinances >> PART II - UNIFIED DEVELOPMENT CODE
>> Appendix C - RESOLUTIONS >> ORDINANCE NO. 2009-16 - >>

ORDINANCE NO. 2009-16

AN ORDINANCE AMENDING THE PAWLEYS ISLAND PERMIT PROCEDURE HANDOUT, PAGE 11-
 GENERAL COMMENTS, ITEM 5- SECOND SENTENCE

BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF PAWLEYS ISLAND:

AN ORDINANCE OF THE TOWN OF PAWLEYS ISLAND, SOUTH CAROLINA, AMENDING THE
 PAWLEYS ISLAND PERMIT PROCEDURE HANDOUT, PAGE 11- GENERAL COMMENTS, ITEM 5-
 SECOND SENTENCE

INTENT

It is the intent of this Ordinance to amend the Pawleys Island Permit Procedure Handout, Page 11-
 General Comments, Item 5, second sentence regarding the allowable width of beach walkways.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF PAWLEYS
 ISLAND, SOUTH CAROLINA, PURSUANT TO THE SOUTH CAROLINA CODE OF LAWS 1976 (AS
 AMENDED) THAT:

Pawleys Island Permit Procedure Handout, Page 11 - General Comments, Item 5- Second Sentence shall read
 as follows:

Beach Walkways (only one per dwelling). The Maximum width of such structure shall not exceed four (4')
 feet with the exception that a six (6') foot long section landward of the OCRM baseline may be expanded
 with benches not to exceed six (6') feet wide.

All other portions of the Pawleys Island Permit Procedure Handout are to remain in effect.

This Ordinance shall take effect and be in full force after the date of its adoption by the Town Council of
 the Town of Pawleys Island.

Adoption of the foregoing Ordinance moved by Sarah Zimmerman and seconded by

Mary McAllister and after discussion and call to vote thereon, the vote was as follows:

Those in favor: Mayor Bill Otis, Mike Adams, Glennie Tarbox, Mary McAllister & Sarah Zimmerman

Those opposed: None

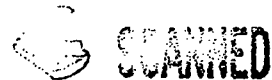
Date of first reading: October 12, 2009

Date of second reading: December 7, 2009

APPROVED: WILLIAM L. OTIS, JR., MAYOR

DATE: 12/7/09

ATTEST: DIANE ALLEN, TOWN CLERK DATE: 12/7/09



Georgetown
County

ARTICLE IV

GENERAL PROVISIONS

IV General Provisions

400. **Nonconforming Buildings or Uses.** Nonconforming buildings or land uses are declared by this Ordinance to be incompatible with permitted uses in the Districts involved. However, to avoid undue hardship, the lawful use of any building or land use at the time of enactment or amendment of this Ordinance may be continued even though such use does not conform with the provisions of this Ordinance except that the nonconforming building or land use shall not be:

- 400.1 Changed to another nonconforming use;
- 400.2 Reused or reoccupied after discontinuance of use or occupancy for a period of 180 days or more or complete season in the case of a seasonal use. A commercial establishment rendered nonconforming by the presence of an off-site sign shall not be subject to this provision. *(Amended Ord. 99-84)*
- 400.3 Reestablished, reoccupied or replaced with the same or similar building, structure or mobile home after physical removal or relocation from its specific site location at the time of passage of this Ordinance;
- 400.4 Repaired, rebuilt, or altered after damage exceeding seventy (70%) percent of its replacement cost at the time of destruction. Reconstruction or repair, when legal, must begin within six (6) months after damage is incurred or completed before the next season in the case of seasonal structures. An extension of six (6) months may be granted if building materials or labor is not available;
- 400.5 Enlarged or altered (refers to a nonconforming use) in excess of an additional twenty (20%) percent of the original existing floor area, in a way which increases its nonconformity, provided that such expansion meets all other requirements of the district;
- 400.6 Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

401. **Nonconforming Building or Use Discontinuance.** Not with standing other provisions of this Ordinance, certain nonconforming buildings or land uses, after this Ordinance is enacted into law, shall be discontinued and/or shall be torn down, altered or otherwise made to conform with this Ordinance within the periods of time set forth below. Upon application to the Board of Appeals, the Board, either according to general rule or upon findings in the specific case, may permit not more than one extension as indicated below. Notice shall be sent by the Zoning Administrator to all nonconforming uses stating wherein they do not conform to said Ordinance and stating the date by which they must either comply or cease to

ARTICLE IV**GENERAL PROVISIONS**

exist. The date that a nonconforming use must either comply or cease to exist shall be measured from the date of enactment or amendment of this Ordinance and shall be observed regardless of whether notice of nonconformity is sent by the Zoning Administrator or received by the affected owner.

401.1

<u>Nonconformities</u>	<u>To Be Discontinued Within</u>	<u>Extension Permitted</u>
Wrecking, junk, scrap, or salvage yards and other open uses of land, automotive storage and sales lots, outdoor storage yards for lumber, building materials, contractor's equipment and junk motor vehicles not possessing current license plates.	One Year	6 Months
Fences and hedges impeding vision at intersections.	30 Days	30 Days
Nonconforming on site signs	Change In Use	None

402. **Mobile Homes.** Mobile homes on individual lots shall be permitted in all residential districts except Resort Residential Districts, R-10 Districts, General Resort Residential Districts and Medical Districts, provided that:

- 402.1 Such use conforms to all requirements set forth for that district;
- 402.2 No more than one (1) mobile home is located on a given lot;
- 402.3 The mobile home in question constitutes the principal use of that lot and no other residence or other principal structure is located on the lot;
- 402.4 The mobile home shall be placed on a permanent foundation, properly anchored and underpinned in conformance with regulations published by the American National Standards Institute (ANSI/NFPA 501A);
- 402.5 The mobile home meets all structural standards established by the State of South Carolina and is in conformance with regulations published by the American National Standards Institute (ANSI/NFPA 501B) regarding the construction of mobile homes;
- 402.6 Such use shall be deemed to have adequate water, sewer and other service facilities meeting standards established by the S.C. Department of Health and Environmental Control, the American National Standards Institute or the Georgetown County Building and Housing Codes, whichever may be applicable; and,

ARTICLE IV

GENERAL PROVISIONS

402.7 Such use shall conform to all standards intended to reduce flood hazards as would be required for on-site construction under this and other ordinances of the County.

A public or private utility department, company or corporation shall not connect utilities, begin service, turn on water, electricity or gas or in any way furnish service to a mobile home until the mobile home owner or lessee shall present a valid mobile home permit, signed by the Building Inspector.

403. **Churches, Synagogues, Temples and Other Places of Worship.** Places of religious worship shall be permitted in all zoning districts except Limited and Heavy Industry, provided that:

403.1 Such use is housed in a permanent structure;

403.2 Such use conforms to all requirements set forth for that district; and,

403.3 Such use is located on a lot not less than one (1) acre in area.

404. **Vision Clearance.** In all districts, there shall be no plants or structures placed in any yard portion of a lot that would obstruct the vision of auto or pedestrian traffic using the street.

405. **Ingress and Egress.** A plan for adequate and safe ingress and egress for all land uses shall be required by the Zoning Administrator.

406. **Flood Protection.** Any structure proposed to be located within any flood prone area shall conform with the Flood Damage Prevention Ordinance of Georgetown County.

407. **Parking and Storage of Certain Vehicles.** Automotive vehicles or travel trailers of any kind or type without current license plates shall not be parked or stored on any residentially zoned property other than in a completely enclosed building.

408. **Water and Air Pollution.** All uses must satisfactorily comply with the requirements of the S.C. Department of Health and Environmental Control, the Georgetown County Health Department and the South Carolina Pollution Control Authority regarding the protection of waterways and atmosphere from pollution by dust, smoke or other waste material.

409. **Front Yard Setback on US Highway 17.** All buildings and structures shall be required to meet a 90 foot setback from US Highway 17 right-of-way throughout the County, regardless of whether a setback is deemed front, rear, or side. In Murrells Inlet, only US Highway 17 Bypass shall be included in the 90 foot setback provision. *(Amended Ord. 2007-11)*

410. **Street Frontage.** Except as herein provided, no building shall hereafter be erected, constructed, moved or relocated on a lot which does not have at least fifty (50) feet of frontage on a publicly dedicated and accepted or publicly maintained street, except:
- 410.1 Lots fronting on cul-de-sacs may have a minimum road frontage of thirty (30) feet if the lot is at least fifty (50) feet in width at the building line;
- 410.2 Condominiums and townhouses may be excluded from this provision with the approval of the Planning Commission;
- 410.3 Lots located on a private street in minor subdivisions or planned developments, which are shown on a properly approved and recorded plat upon which said private street is so designated; and,
- 410.4 Where a lot exists prior to the adoption of the Zoning Ordinance without any frontage, the Planning Commission may determine if private access is adequate for the development of the lot; however, if the owner of the lot owns an adjoining lot with street access, he must combine said lots to comply with this section. This exception only applies to lots separately owned since the enactment of this Ordinance (January 1, 1974).
411. **Accessory Structures.** An accessory structure, which requires a building permit, may be located in the rear setbacks no closer than five (5) feet from the property line provided that: *(Amended Ord. 2009-27)*
1. No accessory structure in this portion of the setback shall exceed twelve (12) feet in height;
 2. No accessory structure shall contain habitable area;
 3. Corner lots may apply this provision to one side yard setback
 4. This provision shall apply to residential uses only in any zoning district.
412. **Corner Lots.** In the case of any lot that adjoins two streets, yards abutting streets shall be treated as front yards. On the major of 2 streets, the first (1st) front set back requirements, shall be (100%) of front yard setback requirements for the district. On a minor street the second (2nd) front setback requirement, shall be 66% of the front yard setback requirements of the district. For corner lots abutting US Highway 17, except in Murrells Inlet on US Business 17, the setback requirement shall be 90 feet as required in Section 409 of this ordinance. *(Amended Ord. 2007-11)*
413. **Elevation of Buildings.** All buildings shall be elevated to help eliminate flooding, in that the finished floor shall be elevated at least eighteen inches above the grade of the lot or the grade of the street, whichever is less, or when this is not practical because of unusual

conditions, the Building Inspector shall determine the appropriate elevation.

414. **Customary, Incidental Home Occupation.** In any residential district, a customary, incidental home occupation as defined in Article III, Section 329, is permitted.
415. **Cabanas, Docks, Dune Crossovers and Boardwalks.** Cabanas, docks, dune crossovers and boardwalks shall be permitted in all zoning districts provided that such structures meet all applicable State and Federal standards for location and design.
- 415.1 Boardwalks or crossovers shall not exceed 6 feet in width unless otherwise permitted by the State.
- 415.2 Only one cabana, dock, dune crossover and/or boardwalk shall be permitted on a lot.
416. **Body Piercing.** Body piercing shall be permitted as an accessory use only in General Commercial or Medical Districts, inside state-licensed health care establishments engaged in the science and art of preventing, curing or alleviating disease, including medical, surgical, psychiatric, chiropractic, osteopathic, and dental hospitals, clinics and offices; but excluding veterinary clinics, and health clubs, gymnasiums, and associated uses.
417. **Incidental Vehicle Sales.** Automobiles, trucks, recreational vehicles, and boats/boat trailers placed in the right-of-way or on public property, for the purpose of exposure and with the intent to sale shall be considered incidental vehicle(s). These vehicle(s) have been declared by Section 401.1 as non-conforming use(s) and shall not be permitted.
(Amended Ord. 2004-03)
- 417.1 The sale of one or more incidental vehicle(s) shall conform to the requirements for the establishment of a commercial vehicle sales business and the regulations set forth in this ordinance.
- as
- 417.2 Further, incidental Vehicle Sales shall not be permitted as a street side vending operation.
- 417.3 This is not meant to prohibit a private property owner the private property for the purpose of sale.
- 417.4 Failure to comply with these requirements shall be subject to the Penalties for Violation as contained in Article XII, Section 1208 of this ordinance.
418. **Traffic Impact Analysis.** Any development or use shall comply with the requirements of the County Code Chapter 15, Article V, Transportation prior to development. *(Amended Ord. 2004-26)*

419. **One Principal Structure on a Lot.** Only one principal structure and its customary accessory structures may hereafter be erected on any lot, except that condominiums, townhouses, motels and shopping centers may be excluded from this provision with the approval of the Planning Commission. Also excluded shall be a principal commercial structure with two or three uses when they are owned or managed as a unit. This section shall not apply in situations otherwise addressed by another section of the Zoning Ordinance. *(Amended Ord. 2007-56)*
420. **Swimming Pools.** Swimming pools may be either above-ground or in-ground and shall be allowed in all residential and commercial zoning classifications as an accessory structure. Swimming pools shall be located outside of the front-yard setback and may be located within five (5) feet of the rear and side property lines. Pools are not exempt from Section 810 of this Ordinance.
421. **Air-supported Membrane Structures.** Air-supported membrane structures are allowed in all residential and commercial zoning classifications, unless addressed elsewhere in this ordinance, and shall be located to the rear of the principle structure. Such structures may be located within five (5) feet of the rear and side yard property lines and shall be required to meet all building and fire protection regulations. Air-supported membrane structures are not exempt from other requirements established in this ordinance. *(Amended Ord. 2009-27)*

OCRM

SCDHEC - OCRM

CRITICAL AREA PERMITTING REGULATIONS

**DEPARTMENT OF ENVIRONMENTAL & NATURAL
RESOURCE MANAGEMENT**

RULES AND REGULATIONS FOR PERMITTING IN THE CRITICAL AREAS OF THE COASTAL ZONE

THIS EDITION PUBLICATION DATE: April 25, 2018
(This packet replaces and supercedes all previous published Regulations)

DISCLAIMER:

This copy of the regulation is provided by DHEC for the convenience of the public. Every effort has been made to ensure its accuracy; however, it is not the official text. DHEC reserves the right to withdraw or correct this text if deviations from the official text, as published in the State Register, are found.

SCDHEC-OCRM

(3) The Department will consider all available information including pending renourishment projects, long-term erosion/accretion trends for the area, and shoal attachment cycles prior to determining whether a structure will be permanently located on the active beach.

(4) Upon determining that a structure is permanently located on the active beach, the Department will notify the property owner and require that the structure be removed or relocated landward by the owner.

30-15. Activities Allowed Seaward of Baseline.

X/L A. **Wooden Walkways:** Wooden walkways no larger in width than six feet are the only structures allowed seaward of the baseline that do not require a SCDHEC-OCRM permit. See R.30-13(O)(1).

B. **Small Wooden Decks:** Wooden decks seaward of the baseline require a SCDHEC-OCRM permit. These decks should be no larger than one hundred and forty-four square feet. See R.30-13(H)(2).

C. Fishing Piers:

(1) New fishing piers require a SCDHEC-OCRM permit and must be open to the public. See R.30-13(R).

(2) Those fishing piers with their associated structures including, but not limited to, bait shops, restrooms, restaurants, and arcades which existed September 21, 1989, may be rebuilt if they are constructed to the same dimensions and utilized for the same purposes and remain open to the public. In addition, those fishing piers with their associated structures which existed on September 21, 1989, that were privately owned, privately maintained, and not open to the public on this date may be rebuilt and used for the same purposes if they are constructed to the same dimensions. A SCDHEC-OCRM permit is required.

D. **Golf Courses:** Golf Courses require a SCDHEC-OCRM permit pursuant to the criteria set forth in R.30-13(Q).

E. **Normal Landscaping:** Normal landscaping requires a SCDHEC-OCRM permit pursuant to the criteria set forth in R.30-13(F).

F. **Special Permits:** The Department shall consider applications for special permits. Special permits are to be issued only in situations where without such a permit, the property owner would have no reasonable use of his property, or when an overriding public benefit can be demonstrated. When issuing special permits, the Department shall consider the legislative findings and policies as set forth in Sections 48-39-30, 48-39-250 and 48-39-260. Specifically, the following criteria shall serve as guidelines when issuing special permits:

(1) A structure cannot be constructed or reconstructed on a primary oceanfront dune or on the active beach, and in the event that the beach erodes so that in the future the permitted habitable structure is located on the active beach, the property owner agrees to remove the structure at his own expense.

**TOWN OF PAWLEYS ISLAND
PAWLEYS ISLAND, SC 29585**

November 2, 2009

Robert and Pamela Wilkes
302 Atlantic Avenue
Pawleys Island, SC 29585

Dec. 2
received

Re: Variance 08-09-1821

Mr. and Mrs. Wilkes:

Your request for a variance to permit a six-foot wide walkway was heard on October 13, 2009. The Unified Development Ordinance of Pawleys Island, Article II, Interpretations, and Definitions, Section 2-10.1 requires a four-foot wide walkway.

The Zoning Board of Appeals for Pawleys Island vote to disapprove this variance with instructions to make the necessary changes to meet the ordinance.

Yours truly,

Joanne M. Ochal
Zoning Administrator /Senior Planner
Georgetown County

LAW OFFICES OF N. DAVID DuRANT AND ASSOCIATES, P.A.
ATTORNEYS AT LAW

N. DAVID DuRANT
L. JAMES PURVIS, JR.

SURFSIDE BEACH, SOUTH CAROLINA OFFICE:
1801 GLENN'S BAY ROAD (29575)
POST OFFICE BOX 14722
SURFSIDE BEACH, SOUTH CAROLINA 29587

TELEPHONE (843) 650-7800
FACSIMILE FOR LITIGATION (843) 650-8090
FACSIMILE FOR REAL ESTATE DEPT (843) 650-8077
E-MAIL: officesofdaviddurant@sc.rr.com

January 5, 2010

Joseph F. Singleton, Esquire
Singleton, Burroughs & Young, PA
Post Office Box 1244
Conway, SC 29528

RE: Wilkes vs. Town of Pawleys Island and Georgetown County Planning Commission
Case No. 2009-CP-22-02076

Dear Joey:

Please allow this letter to serve as the Town's official response and position concerning your letter dated December 21, 2009, to Howard Ward, Planning Official, Town of Pawleys Island.

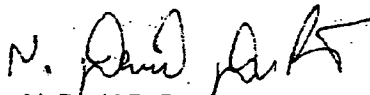
Please be advised that the Wilkes' application for a variance has already been denied by the Zoning Board of Appeals. It is my understanding that you have appealed the decision of the Zoning Board of Appeals.

For your benefit, I am enclosing a copy of that signed Order from the Chairman of the Zoning Board of Appeals.

Therefore, the application that you forwarded to Howard Ward, who is not in any way connected with the Zoning Board of Appeals will not be processed. By copy of this communication, I am forwarding the letter to the Town of Pawleys Island Clerk, as well as, to the Building Inspector in Georgetown County advising them to return any checks to your office regarding this matter.

Should you have any questions or need any clarification of the Town's position, please feel free to contact me. With sincere regards, I am

Very truly yours,


N. David DuRant

NDD:jr

Enclosure

cc: Town of Pawleys Island
Georgetown County Building Inspector

ZONING BOARD OF APPEALS
TOWN OF PAWLEYS ISLAND
P.O. BOX 1818
PAWLEYS ISLAND, SC 29585

IN THE MATTER OF:

ROBERT J. AND PAMELA T. WILKES REQUEST FOR VARIANCE
AT 302 ATLANTIC AVENUE, PAWLEYS ISLAND, SOUTH CAROLINA

FINAL DECISION

THIS MATTER COMES BEFORE the Zoning Board of Appeals on October 13, 2009. Robert Wilkes and Pamela Wilkes have filed an Application for a Variance at 302 Atlantic Avenue, Pawleys Island, South Carolina. The variance that they seek is a variance to a permit six foot (6') wide walkway located at their home at that address.

Present at the call of the case were all of the members of the Zoning Board of Appeals. However, at the outset of the case, John Hart, one of the members of the Zoning Board of Appeals, recused himself in as much as he was the adjacent property owner, and he had a conflict of interest in moving forward or deciding the application. Prior to the start of the case, he recused himself and left the building.

FINDINGS

1. In November of 2008 a building permit was issued for the remodeling for increased living space at the location of 302 Atlantic Avenue, Pawleys Island, for and on behalf of the Wilkes. Some time thereafter in June of 2009, there was a building permit applied for, for a walkway; however, the contractor or subcontractor never requested this building permit, and it was never issued for the construction of a walkway. The contractors and subcontractors proceeded to

complete a six foot (6') walkway at the site until work was stopped by the building inspector in July. Most of the work had already been done at that point. There was a six foot (6') walkway which is a violation of existing Pawleys Island Ordinances. The walkway which was constructed without a permit by the contractor or subcontractor was a six foot (6') walkway which is in violation of a Town Ordinance passed in 2002 which restricted the size of all walkways to four feet (4').

2. At the outset of the hearing, the Zoning Board of Appeals heard from the Town Attorney, N. David DuRant, who appeared on behalf of The Town of Pawleys Island, and it was stated clearly for the record that the Town of Pawleys Island's position was that this was a violation of the existing Ordinances restricting the size of walkways to four feet (4') and that the Town opposed granting a variance in this particular matter and case.
3. Joanne Ochal, Georgetown County Zoning, presented the essential facts to the Appeal Board.
4. After Mr. DuRant's presentation, Robert J. Wilkes was sworn in and testified as to his request for a six foot (6') walkway.
5. Mrs. Pamela T. Wilkes also presented testimony at the hearing.
6. After all of the testimony was presented, and the parties positions made clear to the Board of Appeals, the Board of Appeals deliberated in the open. After deliberations, Sarah Irby, Board Member, made a motion that the variance request be denied. This motion was seconded by Frank Robinson, Board Member.
7. The Motion was discussed, and it was unanimously determined that the request for a variance for a six foot (6') walkway by the Wilkes be denied.

As stated herein above, the Zoning Board of Appeals has determined that Robert J. Wilkes and Pamela T. Wilkes have not met the necessary criteria in which to obtain a variance in this matter, and the Zoning Board of Appeals does hereby unanimously deny their request for a six foot (6') walkway under the facts and circumstances of this case.

Respectfully submitted,

Roger Ward, Chairman
Zoning Board of Appeals
Town of Pawleys Island

Dated: _____

RECEIVED
MAY 19 2010

BY: pd



120 Broad Street
Georgetown, S. C. 29440
Phone: 843-545-3158
Fax: 843-545-3299

Ms. Kathryn Sligh
Singleton Burroughs and Young
PO Box 1244
Conway, SC 29528

Re: Robert Wilkes

May 14, 2010

Ms. Sligh,

I want to confirm a couple of conversation that we recently had regarding Robert Wilkes property located at 302 Atlantic Avenue, Pawleys Island, SC.

Mr. Wilkes submitted revised drawing on November 11, 2009, regarding the walkway located at the above address. The drawing as submitted did not meet code section 2-10.1 of the Unified Development Ordinance for the Town of Pawleys Island. On November 23, 2009, I verbally indicated that I was disapproving the plans as submitted.

If I can be of any other assistance, please let me know.

Yours truly,

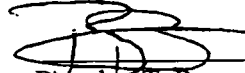
Joanne M. Ochal

Joanne M. Ochal

Zoning Administrator Georgetown County

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.


Brandon T. Reeser
P.O. Box 13177
Charleston, SC 29422
(843) 762-4567
Attorney for Appellants

June 23, 2016

RECEIVED

JUL 15 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM GEORGETOWN COUNTY JUL 15 2016

Court of Common Pleas

SC Court of Appeals

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2016-000029

Robert and Pamela Wilkes,

Appellants,

v.

Town of Pawleys Island,
Georgetown County Planning
Commission,

Respondents.

FINAL BRIEF OF APPELLANTS

Brandon T. Reeser
P.O. Box 13177
Charleston, SC 29422
(843) 762-4567
Attorney for Appellants

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STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER COURT ERR IN RULING THAT THE MANDATORY UNIFORM DEVELOPMENT CHECKLIST AND TUTORIAL IS NOT A BINDING REGULATION OF THE TOWN OF PAWLEYS ISLAND WHEN THE UNIFORM DEVELOPMENT ORDINANCE CHECKLIST AND TUTORIAL WAS CREATED BY THE TOWN VIA ORDINANCE AND AMENDED BY THE TOWN VIA ORDINANCE?
2. DID THE ZONING BOARD OF APPEALS, GEORGETOWN COUNTY PLANNING COMMISSION, AND LOWER COURT ERR IN ONLY CONSIDERING SECTION 2-10.1 OF THE TOWN OF PAWLEYS ISLAND UNIFORM DEVELOPMENT CODE AS THE APPLICABLE ZONING REGULATION GOVERNING APPELLANTS' VARIANCE REQUEST AND NOVEMBER 17, 2009 PERMIT APPLICATION WHEN MULTIPLE ORDINANCES GOVERN A BEACH WALKWAY'S PERMITTED WIDTH?
3. DID THE LOWER COURT ERR IN RULING THAT APPELLANTS WERE NOT ENTITLED TO A BUILDING PERMIT FOR THEIR NOVEMBER 17, 2009 WALKWAY PERMIT APPLICATION WHEN IT COMPLIED WITH ALL TOWN ORDINANCES AND LAWFUL EXCEPTIONS GOVERNING WALKWAY WIDTH?

STATEMENT OF THE CASE

Robert and Pamela Wilkes own real property within the Town of Pawleys Island, South Carolina. Appellants applied for a building permit on June 25, 2009 to construct a beach walkway from their home at 302 Atlantic Avenue to the beachfront on the island. The Town of Pawleys Island (hereinafter "Town") issued a stop work order on the walkway in July 2009 on the basis that the walkway was six (6) feet in width and in contravention of Section 2-10.1 of the Town of Pawleys Island Uniform Development Code, which allowed for beach walkways four (4) feet in width. Appellants sought a variance with the Town Zoning Board of Appeals (hereinafter "Board") to remove the stop order and submitted a revised permit application on November 17, 2009 to the Town and the Georgetown County Planning Department (hereinafter "Planning Department") seeking approval for a walkway that was six-feet wide with two feet of such width comprised of benches. To comply with the Unified Development Code and to obtain a building permit for a walkway, Appellants were directed to Section 3-6.2(A), which mandates that a walkway applicant complete a Uniform Development Ordinance, or "UDO," checklist provided by the Town. By its terms, the checklist and tutorial provided that:

"Beach Walkways (only one per dwelling) may be expanded with benches not to exceed 6 feet wide but landward of the OCRM baseline."

On December 14, 2009, The Planning Department denied the revised permit application by phone, which Appellants appealed to the Board. On January 5, 2010, the Board forwarded an order denying the original variance with a letter from the Town's counsel stating that the ruling was considered a denial of both the June 25 and November 17 permit applications.

The matter was appealed to the circuit court on December 21, 2009. On June 28, 2011, the Court remanded the case for mediation and rehearing before the Zoning Board of Appeals. A rehearing before the Board was held on March 29, 2012 and a decision denying the variance request issued on May 3, 2012. Appellants appealed the decision of the Board on June 20, 2012. A hearing on the appeal was held before the Court on November 6, 2014, and a Final Order affirming the Zoning Board of Appeals was filed on December 18, 2014. Appellants filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCF on January 7, 2015, which was heard on October 12, 2015. The lower court denied Appellants' Motion by written Order filed on December 21, 2015. Appellants submitted their Notice of Appeal on January 4, 2016.

STANDARD OF REVIEW

“Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” Eagle Container Co., LLC v. Cnty. of Newberry, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008) (citing Sea Island Scenic Parkway Coal. v. Beaufort Cnty. Bd. of Adj. & App., 321 S.C. 548, 550, 471 S.E.2d 142, 143 (1996). “Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, ‘a broader and more independent review is permitted when the issue concerns the construction of an ordinance.’” Charleston Cnty. Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) (internal citation omitted) (quoting Sea Island Scenic Parkway Coal., 316 S.C. at 235, 449 S.E.2d at 256).

ARGUMENTS

I. THE UNIFIED DEVELOPMENT CHECKLIST AND TUTORIAL CONSTITUTE ZONING REGULATIONS THAT HAVE THE FORCE OF LAW AND COMPRISE PART OF THE TOWN OF PAWLEYS ISLAND'S ZONING REGULATIONS REGARDING ALLOWABLE BEACH WALKWAY WIDTHS.

"The cardinal rule of statutory construction is that courts will ascertain and effectuate the intent of the lawmaking body." First General Services of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994). "In ascertaining the intent of the lawmaking body, the ordinance must be read as a whole; sections which are part of the same general statutory law must be construed together and each given effect if it can be done by any reasonable construction." Id. (citing Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989); Smalls v. Weed, 293 S.C. 364, 370, 360 S.E.2d 531, 534 (Ct. App. 1987)).

In its December 21, 2015 Order, the lower court erred in holding that there was only one ordinance governing the width of walkways in the Town of Pawleys Island at the time Appellants submitted their original and revised building permit applications in June and November of 2009, respectively. (R. pp. 8-9). In its holding, the court opined that the Town had exclusive authority to regulate the width of walkways "landward of the OCRM setback line." Id. OCRM regulations in effect at the time allowed walkways six (6) feet in width seaward of the established setback line. SOUTH CAROLINA OFFICE OF COASTAL RESOURCE MANAGEMENT, CRITICAL PERMITTING REGULATIONS § 30-15(A) (2008), R. p. 90.

It is clear in this matter that, at a minimum, two Town ordinances in effect at the time Appellants submitted their November 17, 2009 revised building permit regulated the construction of beach walkways within the Town of Pawleys Island. Specifically, Section 2-10.1

of the Unified Development Code, as written in 2009, permitted all beach walkways to be four feet in width. Town of Pawleys Island, S.C., Unified Development Code § 2-10.1 (2008). To comply with the Unified Development Code by obtaining a building permit for a walkway, prospective applicants were directed to Section 3-6.2(A), which provides that:

Prior to making application for a building permit, the applicant shall complete a UDO checklist and secure a signed review by a designated member of the Pawleys Island Planning Commission. This information is available from the town clerk.

Town of Pawleys Island, S.C., Unified Development Code § 3-6.2(A) (2015) (emphasis added).

The UDO checklist and tutorial from the Town, as it appeared in November of 2009, stated the following with regard to beach walkways:

Beach Walkways (only one per dwelling) may be expanded with benches not to exceed 6 feet wide but landward of the OCRM baseline.

Town of Pawleys Island, S.C., Unified Development Ordinance Checklist Tutorial, p. 4 (2008), R. p. 81.

Strict compliance with the UDO checklist and tutorial was required to obtain any walkway construction application under Section 3-6.2(A) of the Unified Development Ordinance. Town of Pawleys Island, S.C., Unified Development Code § 3-6.2(A) (2015). Indeed, the UDO checklist and tutorial have been openly amended by the Town via ordinance, and the Town has expressed a clear and unambiguous intent to enforce the UDO checklist's terms. Town of Pawleys Island, S.C., Ordinance 2009-16 (Dec. 7, 2009), R. p. 82, ("[a]ll other portions of the Pawleys Island Permit Procedure Handout are to remain in effect.").¹ In fact, the

¹ Under Section 5-7-260 of the South Carolina Code of Laws, a municipal corporation must make amendments to ordinances that, if violated, would result in the imposition of a fine by ordinance. S.C. Code Ann. § 5-7-260. The Town imposes a \$500 per-day fine for violation of its zoning ordinances. Town of Pawleys Island, S.C., Unified Development Ordinance, § 4-4.4 (2003).

UDO checklist and tutorial are so integral to the Town's walkway zoning scheme that the Town has, since November 17, 2009, amended the UDO checklist and Section 2-10.1 such that their terms are the same. See Town of Pawleys Island, S.C., Unified Development Ordinance § 2-10.1(A) (2015); Town of Pawleys Island, S.C., Ordinance 2009-16 (Dec. 7, 2009), R. p. 82. There would be no reason to make such an amendment to the UDO checklist and tutorial by ordinance if Section 2-10.1 was enforceable and the UDO checklist and tutorial were not. Further, Ms. Joanne Ochal of the Georgetown County Planning Commission admitted at the March 29, 2012 Zoning Board of Appeals hearing that the tutorial, in which the exception language is included, "was in part of the ordinance." (R. p. 61, lines 17-21).

"Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Additionally, this Court is bound to construe zoning ordinances narrowly for the benefit of the property owner. See Purdy v. Moise, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953). In this case, Section 2-10.1 of the Unified Development Code provides a width restriction for beach walkways of four feet. The Town's mandatory UDO checklist and tutorial, which specifically applied to "Beach Walkways," allowed for six-foot-wide walkways so long as two feet of said width is composed of benches.² It is clear that both ordinances apply to the

² On December 7, 2009, the Town passed Ordinance No. 2009-16, which expressly amends the UDO checklist:

Beach Walkways (only one per dwelling). The Maximum width of such structure shall not exceed four (4') feet with the exception that a six (6') foot long section landward of the OCRM baseline may be expanded with benches not to exceed six (6') feet wide.

Town of Pawleys Island, S.C., Ordinance 2009-16 (Dec. 7, 2009), R. p. 82.

This ordinance was passed subsequent to Appellants' revised permit application of November 17, 2009. Therefore, the previous version of the ordinance would apply to Appellants' supplemental permit application.

construction of a beach walkway within the limits of the Town of Pawleys Island, providing a default width of four feet for beach walkways while allowing an exception for six-foot-wide walkways when two feet of such width consists of benches.

There is no dispute that the Town publishes the checklist and tutorial, maintains the checklist and tutorial, and edits the checklist and tutorial through the passage of ordinances as it did on December 7, 2009. Any builder, homeowner, or contractor who wants to perform work on a walkway within the Town of Pawleys Island must comply with the UDO checklist and tutorial before a permit may be issued under Section 3-6.2(A). See Town of Pawleys Island, S.C., Unified Development Code § 3-6.2(A) (2015). As such, Sections 2-10.1, 3-6.2(A), and the UDO checklist and tutorial referenced and incorporated therein comprise a complete statutory scheme under which the Town regulates beach walkway construction and which apply to Appellants' variance request and permit application in their entirety.

2. BECAUSE THE UNIFORM DEVELOPMENT ORDINANCE CHECKLIST AND TUTORIAL ARE PART OF THE LEGISLATIVE ZONING REGULATION SCHEME PASSED BY THE TOWN TO GOVERN BEACH WALKWAY WIDTHS, THE ZONING BOARD OF APPEALS, GEORGETOWN COUNTY PLANNING COMMISSION, AND LOWER COURT ERRED BY NOT CONSIDERING AND APPLYING ALL APPLICABLE REGULATIONS IN DENYING APPELLANTS' VARIANCE REQUEST AND NOVEMBER 17, 2009 WALKWAY PERMIT APPLICATION.

On November 17, 2009, Appellants submitted a revised permit application for a six-foot-wide beach walkway with a built-in bench composing two feet of the specified width. At that time, the UDO checklist and tutorial under Section 3-6.2(A) continued to read:

Beach Walkways (only one per dwelling) may be expanded with benches not to exceed 6 feet wide but landward of the OCRM baseline.

Unified Development Ordinance Checklist Tutorial, p. 4 (2008); (R. p. 81).

By letter dated November 2, 2009 the Zoning Board of Appeals purports to have denied Appellants' initial variance request. (R. p. 91). The letter noted that the Board only considered Section 2-10.1 as the basis of its decision. Id. Additionally, by letter dated January 5, 2010, the Town denied Appellants' November 17, 2009 permit application without stating the grounds for such denial. See (R. p. 92). On May 14, 2010, the Georgetown County Planning Department formally denied Appellants' permit request on the basis that it does not comply with Section 2-10.1. (R. p. 96). None of these denial letters reference Section 3-6.2(A) or the UDO checklist and tutorial nor do they state that the respective governing bodies considered them in their decision.

In its letter of May 14, 2010, the Planning Commission clearly stated that the basis for its decision to deny Appellants' November 17, 2009 supplemental permit application is that the submitted walkway design does not conform to Section 2-10.1. (R. p. 96). However, the

Planning Commission failed to apply the terms of the UDO checklist and tutorial under Section 3-6.2(A), which provided an exception to Section 2-10.1 and comprised part of the Town's statutory regulating scheme. Thus, the Planning Commission did not properly consider all applicable governing law in denying Appellants' permit.

At the first Board hearing on October 29, 2009, the only ordinance considered by the Board of Zoning Appeals was Section 2-10.1. (R. p. 55). During its March 29, 2012 hearing, the Town Board of Zoning Appeals again did not consider whether Section 3-6.2(A) and the UDO checklist and tutorial applied to Appellants' variance request. (R. pp. 58-59). In its May 24, 2012 Order following the March 29, 2012 hearing, the Board again denied a variance for the permit under the terms of Section 2-10.1 in isolation. See (R. pp. 15-21).

Additionally, in its Final Order, the lower court held that Appellants should "reduce [the walkway] to four feet in width and [bring it] into compliance with the Unified Development Ordinance." (R. p. 3). The court only referenced Section 2-10.1 of the Unified Development Ordinance and failed to consider, as did the Board of Zoning Appeals and the Georgetown County Planning Commission, Section 3-6.2(A) and the UDO checklist and tutorial. Id.

At no time has any municipal body or court in the last seven (7) years considered the application of any ordinance or regulation other than Section 2-10.1 to any of Appellants' variance or permit applications. Yet the Town has made clear that it expects both Section 3-6.2(A) and the UDO checklist and tutorial to remain "in full force and effect" as a zoning regulation. See Town of Pawleys Island, S.C., Ordinance 2009-16 (Dec. 7, 2009), R. p. 82. Failure to properly consider and apply all applicable beach walkway zoning ordinances in reviewing or considering Appellants' variance request or permit applications is an error of law that should be reversed.

3. **UNDER SOUTH CAROLINA LAW, APPELLANTS ARE ENTITLED TO A PERMIT FOR THEIR NOVEMBER 17, 2009 WALKWAY APPLICATION AND CONTINUED USE OF SAID WALKWAY AS IT COMPLIED WITH THEN-EXISTING ZONING AND LAND USE REGULATIONS.**

It is apparent that Appellants' revised permit application was submitted to the Town and the Planning Commission under then-existing zoning requirements for a beach walkway within the Town as of November 17, 2009. As explained above, those zoning regulations include, at a minimum, Sections 2-10.1, 3-6.2(A), and the required UDO checklist and tutorial referenced therein.

Under long-standing South Carolina law, if a landowner submits a proper application for a permit that is in accord with existing ordinances, said landowner is entitled to such permit. Pure Oil Division v. City of Columbia, 254 S.C. 28, 34, 173 S.E.2d 140, 143 (1970) ("In both instances [application of permit and issuance of permit], the right protected is the same, that is, the good faith reliance by the owner of the right to use his property as permitted under the Zoning Ordinance in force at the time of the application for a permit."). Additionally, a "vested right[] acquired under a zoning ordinance in effect at the time of the application for a permit will be protected even against a change in the zoning ordinance" Id. at 35 (citing Kerr v. City of Columbia, 232 S.C. 405, 413, 102 S.E.2d 364, 367 (1958)). Therefore, it is clear that Appellants had a vested right to the permit that both the Town and the Planning Commission denied to them regardless of whether subsequent changes to any applicable ordinances between the time of Appellants' application, November 17, 2009, and the dates Appellants were informed that their application was denied.

The lower court denied Appellants' estoppel claim based on the November 17, 2009 permit application's compliance with then-existing ordinances, holding that the only ordinance

that applied was Section 2-10.1. (R. pp. 8-9). The lower court also held that Appellants had no vested right in a permit for their walkway with no finding that Appellants' November 17, 2009 permit application complied with all applicable zoning regulations. See (R. pp. 6-9). Further, in its Final Order, the lower court affirmed the Board's erroneous decision that a variance should be denied because Appellants had not received a permit. (R. p. 2-3). All such holdings by the lower court ignore Appellants' rights as held in Pure Oil Division. While the Town may later have disapproved of such six-foot widths, the Town waited until five months after it issued a stop order on Appellant's property and six months after Appellants issued a supplemental permit application before it made any changes to the UDO checklist and tutorial.

In this case, Appellants applied for a permit on November 17, 2009 to construct a walkway in compliance with the UDO checklist and tutorial with which they must comply under Section 3-6.2 of the Unified Development Ordinance. The Town made no changes to its applicable zoning regulations until it passed its December 7, 2009 ordinance editing the language of the UDO checklist. Under Pure Oil Division, the subsequent permit issuance could not have been legally denied, as it would have deprived Appellants of their rights to construct and use a walkway in compliance with the Town's then-existing zoning restrictions. 254 S.C. at 34, 173 S.E.2d at 143. Therefore, under Pure Oil Division, Appellants' failure to procure a permit does nothing to alter their rights to continue their use of the six-foot walkway under the vested rights doctrine until a proper determination as to their November 17, 2009 application is made under applicable law.

Also, as explained above, neither the Town nor the Planning Commission gave consideration as to whether Appellants' November 17, 2009 application was proper under all existing walkway regulations and ordinances. Therefore, at a minimum, this matter should be

remanded to the Zoning Board of Appeals for consideration as to whether Applicants' November 17, 2009 application was compliant with Section 3-6.2(A) and the UDO checklist and tutorial incorporated therein.

CONCLUSION

For the reasons stated in the above paragraphs, this Court should reverse the December 21, 2015 Order of the lower court. Both Sections 2-10 and 3-6.2(A) of the Town of Pawleys Island govern the width of walkways within the Town. By its terms and through the affirmations of its force and effect by the Town, the mandatory UDO checklist and tutorial under Section 3-6.2 are part of that regulatory scheme. The Zoning Board of Appeals, the Georgetown County Planning Department, and the lower court never considered the application of Section 3-6.2(A) or the UDO checklist and tutorial in their denials of Appellants' 2009 variance and permit requests. Additionally, the lower court erred in holding that Appellants are not entitled to a vested right in the issuance of a permit pursuant to their November 17, 2009 permit application under applicable law. Given that there was no consideration of all of the applicable zoning regulations in effect at the time of Appellants' application, at a minimum this matter should be remanded for a determination as to whether Appellants' November 17, 2009 permit application conforms with Section 2-10, Section 3-6.2(A), and the UDO checklist and tutorial as they existed at the time of the application. Appellants' permit should be granted to the extent it complies with those ordinances and regulations.

July 13, 2016

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 15 2016

SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2016-000029

Robert and Pamela Wilkes,

Appellants,

v.

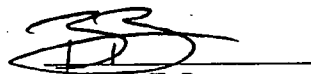
Town of Pawleys Island,
Georgetown County Planning
Commission,

Respondents.

PROOF OF SERVICE

I certify that I have served three copies of the Appellants' Final Brief on the Town of Pawleys Island by depositing said copies in the United States Mail, postage prepaid, on July 14, 2016, addressed to its attorneys of record, N. David DuRant and Natale Fata, at their respective addresses of P.O. Box 14722 and P.O. Box 16620, Surfside Beach, SC 29587.

July 14, 2016



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED

JUL 22 2016

SC Court of Appeals

APPELLATE CASE NO. 2016-000029

Robert and Pamela Wilkes,.....Appellants,

v.

Town of Pawleys Island,
Georgetown County Planning Commission.....Respondents.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR IN THE RULING THAT THE MANDATORY UNIFORM DEVELOPMENT CHECKLIST AND TUTORIAL IS NOT A BINDING REGULATION OF THE TOWN OF PAWLEYS ISLAND?
- II. DID THE ZONING BOARD OF APPEALS, GEORGETOWN COUNTY ZONING ADMINISTRATOR, AND LOWER COURT ERR IN ONLY CONSIDERING 2-10.1 OF THE TOWN OF PAWLEYS ISLAND UNIFORM DEVELOPMENT CODE AS THE APPLICABLE ZONING REGULATION GOVERNING APPELLANTS' VARIANCE REQUEST AND NOVEMBER 17, 2009 PERMIT APPLICATION?
- III. DID THE LOWER COURT ERR IN RULING THAT APPELLANTS WERE NOT ENTITLED TO A BUILDING PERMIT FOR THEIR NOVMEBER 17, 2009 WALKWAY PERMIT APPLICATION WHEN APPELLANTS DID NOT COMPLY WITH TOWN ORDINANCES AND LAWFUL EXCEPTIONS GOVERNING WALKWAY WIDTH?

STATEMENT OF THE CASE

Robert J. Wilkes and Pamela J. Wilkes (hereinafter, "Appellants") own property located at 302 Atlantic Avenue within the municipality of Pawleys Island. The Appellants began extensive remodeling of their residence and built a walkway from their residence to the beach in the Summer of 2009. (R. p. 2 lines 5-7). The Appellants applied for a permit for said walkway on June 25, 2009. (R. p. 4 line 3). Thereafter, a walkway was constructed on the Appellants property, without approval and without securing the necessary permits from the Zoning Department. (R. p. 4 line 4). The walkway, landward of the OCRM line exceeded four feet in width, is in violation of the Town of Pawleys Island Unified Development Ordinances. (R. p. 4 line 5).

The Town of Pawleys Island informed the Appellants that their walkway exceeded the permissible width provided for in the Town's zoning ordinance. (R. p. 5 line 11). On August 28, 2009 the Appellants submitted a variance request to the Zoning Board of Appeals and on November 24, 2009 the Appellants request was denied. (R. pp. 12-14). On Nov. 17, 2009 the Appellants submitted a revised building permit application to the Town of Pawleys Island and to Georgetown County Planning, stating that two feet of said walkway would be benches. This permit was denied.

The matter was appealed to the circuit court on December 21, 2009. (R. pp. 22-30). On June 28, 2011 the Court remanded the case for mediation and rehearing before the Zoning Board of Appeals. An appeal hearing was then held by the Town of Pawley's Island Board of Zoning Appeals on March 29, 2012 at 6:00 P.M. at the Waccamaw Neck Branch Library in Pawleys Island community of Georgetown County, South Carolina and

this appeal was denied. (R. pp. 57-62). The Appellants appealed the decision of the Zoning Board of Appeals on June 20, 2012. A hearing on the appeal was held before the Honorable Larry B. Hyman, Jr., on November 6, 2014, and a Final Order affirming the Zoning Board of Appeals was filed December 18, 2014. (R. pp. 34-37). Appellants filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCP on January 7, 2015, which was heard on October 12, 2015. (R. pp. 31-33). The Circuit Court denied Appellants' Motion by written Order filed on December 21, 2015 and Appellants submitted their Notice of Appeal on January 4, 2016. (R. pp. 4-11).

The Appellants contend that their Revised Application for a variance, submitted on November 17, 2009, seeking to allow their walkway exceeding four feet in width, was wrongfully denied. The Appellants base their contention on non-authoritative documents, specifically the "quick analysis tutorial", which states walkways that exceed four feet in width can be extended to a maximum of six feet in width when two feet of the width of the walkway consists of benching. The Town of Pawleys Island (hereinafter known as "Town") responds by arguing that the "quick analysis tutorial" is not a legally binding document and that the "tutorial" itself specifically refers to the Pawleys Island Unified Development Ordinances for any stipulation of details. Further, the Town responds by arguing that if Appellants had waited for the issuance and approval of a permit from the Town, they would have been informed that the design and construction of a six foot walkway, with added benches, and in that particular location would have been denied by the Town.

STANDARD OF REVIEW

On appeal the Standard of Review is the same standard of review used by the Circuit Court below: “the findings of fact by the Board shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence.” Austin v. Board of Zoning Appeals, 606 S.E.2d 209, 211 (Ct.App. 2004); see S.C.Code Ann. § 6-29-840(A) (Supp.2003); see also Heilker v. Zoning Bd. of Appeals for City of Beaufort, 346 S.C. 401, 405, 552 S.E.2d 42, 44 (Ct.App.2001). “In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the Board is correct as a matter of law. Id. Furthermore, “[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.”” Id.; quoting Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). “However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” Id.

ARGUMENT

I. THE “QUICK ANALYSIS TUTORIAL” AND CHECKLIST DO NOT CONSTITUTE ZONING REGULATIONS THAT HAVE THE FORCE OF LAW AND ARE NOT A COMPRISED PART OF THE TOWN OF PAWLEYS ISLAND’S ZONING REGULATIONS REGARDING ALLOWABLE BEACH WALKWAY WIDTH.

The “Quick Analysis Tutorial” and “UDO Checklist” do not have the force of law, were not created by the legislators of the Town of Pawleys Island, and are therefore not a part of the Town’s zoning regulations regarding the allowable beach walkway width. Further, Section 2-10.1 of the Unified Development Code, as written in 2009, is clear and unambiguous, in that it allows beach walkways to be a maximum of four feet in width.

No building or other structure shall be erected, moved, added to or structurally altered without a permit therefor issued by the building inspector. No building permit shall be issued by the building inspector except in conformity with the provisions of these regulations unless he receives a written order from the board of zoning appeals in the form of an administrative review or variance as provided by the zoning regulations. The building inspector shall issue building permits in accordance with the provisions of the building code in effect in the Town of Pawleys Island. Town of Pawleys Island, S.C., Unified Development Code § 3-6.2 (2015).

The primary purpose in interpreting statutes is to ascertain and effectuate the intent of the legislature. Cain v. Nationwide Prop. and Cas. Ins. Co., 378 S.C. 25, 29, 661 S.E.2d 349, 351 (2008). Under the plain meaning rule, it is not the Court's place to change the meaning of a clear and unambiguous statute. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Hodges v. Rainey, 533 S.E.2d 578, 581 (2000); quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992). When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning. Timmons v. South Carolina Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970). The interpretation of a statute is a question of law. CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Further, "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Id. at 77, 716 S.E.2d at 882. However, if the agency's interpretation conflicts with the statute's plain language, it must be rejected. Id. Sparks v. Palmetto Hardwood, Inc., 750 S.E.2d 61, (2013).

The Town of Pawleys Island Code of Ordinances, at the time of the Appellants' application for a permit to build a beach walkway, clearly states that any walkways built must be a maximum of four feet in width. Town of Pawleys Island, S.C., Unified Development Code § 2-10.1 (2008). The Pawleys Island Town ordinance is stated in plain language and is clear, explicit, and unambiguous.

The Appellants argue that Section 3-6.2(A) of the Town of Pawleys Island Unified Development Code, which states the "applicant shall complete a UDO Checklist" prior to making application for a building permit, makes this "UDO Checklist" an enforceable law and part of the Town of Pawleys Island Zoning Regulations regarding allowable beach walkway. The Appellants want this aforementioned "UDO Checklist", which is not printed anywhere in the actual Code of Ordinances for the Town of Pawleys Island, to be enforceable law because it mistakenly stated that beach walkways may be expanded "with benches not to exceed 6 feet wide." The UDO checklist explicitly defers to the Ordinance. The "UDO Checklist" was not written, transcribed, or adopted by Pawleys Island legislators, but part of an "agency's interpretation" which "conflicts with the statute's plain language", and should therefore be rejected.

Not only is the "UDO Checklist" not an enforceable law, contrary to Appellants' argument, but also the Appellants failed to comply with the entire ordinance of Section 3-6.2, in which the "UDO Checklist" is mentioned. The Appellants diligently stress the importance of the one mention of the UDO Checklist within Section 3-6.2(A), but failed to obtain a permit before beginning construction as required by Town of Pawleys Island, S.C., Unified Development Code § 3-6.2 (2015). If the Appellants would have properly waited for approval or disapproval of their permit, they would have been informed of

their improper belief of beach walkway widths that were permissible. The Ordinance states "No building or other structure shall be erected, moved, added to or structurally altered without a permit therefor issued by the building inspector." Town of Pawleys Island, S.C., Unified Development Code § 3-6.2 (2015). The Appellants applied for a permit for the aforementioned walkway on June 25, 2009. (R. p. 4 line 3). Thereafter, a walkway was constructed on the Appellants property, without the approval and without securing the necessary permits from the Building Inspector. (R. p. 4 line 4). The Town of Pawleys Island, after learning the Appellants had begun construction without a permit and with the improper width dimensions, informed the Appellants that their walkway exceeded the permissible width provided for in the Town's zoning ordinance. (R. p. 5 line 11). The Appellants feverishly argue that they relied on the verbiage of the aforementioned tutorial, however if they had followed the proper procedure within this tutorial they would not have improperly installed a beach walkway, because the building inspector would have never approved the plans for the structure.

The "Quick Analysis Tutorial" and "UDO Checklist" do not have the force of law, were not created by the legislators of the Town of Pawleys Island, and are therefore not a part of the Town's zoning regulations regarding the allowable beach walkway width. The intent of Section 2-10.1 of the Unified Development Code, as written in 2009, was clear and unambiguous statute, and any informal interpretation ("UDO Checklist") of that statute that conflicts with this statute must be rejected.

II. AS THE UNIFORM DEVELOPMENT ORDINANCE CHECKLIST AND TUTORIAL ARE NOT A PART OF THE LEGISLATIVE ZONING REGULATIONS PASSED BY THE TOWN TO GOVERN BEACH WALKWAYS WIDTHS, THE ZONING BOARD OF APPEALS, GEORGETOWN COUNTY ZONING ADMINISTRATOR, AND THE

LOWER COURT CORRECTLY RULED BY CONSIDERING AND APPLYING ALL APPLICABLE REGULATIONS IN DENYING APPELLANTS' VARIANCE REQUEST AND NOVEMBER 17, 2009 WALKWAY PERMIT APPLICATION.

Section 2-10.1 of the Town of Pawleys Island, S.C., Unified Development Code stating that the proper width of beach walkways shall not exceed four feet in width is the correct and only ordinance needed for the determination of Appellant's permit application and variance request, because it was the unambiguous statute that was the controlling law at the time of the permit, construction, and variance request.

The Appellant argues that Zoning Board of Appeals, Georgetown County Zoning Administrator, and the Circuit Court were all incorrect for referencing a valid ordinance in Section 2-10.1 of the Pawleys Island, S.C., Unified Development Code, which allowed for a maximum four feet in width for beach walkways. The Appellant continues by arguing that the Zoning Board of Appeals, the Georgetown County Zoning Administrator, and the Circuit Court should have followed the abovementioned "UDO Checklist" and tutorial as a basis for its decision, or at least that these reviewing bodies should have taken these documents into account.

The "UDO Checklist" is paperwork required for the pre-application permit process of the Town of Pawleys Island, S.C., Unified Development Code § 3-6.2 (2015). Section 3-6.2 states, "the building inspector shall issue building permits in accordance with the provisions of the building code." The "UDO Checklist" and tutorial are not a provision of the building code but a pre-application checklist that states that "(p)rior to making application for a building permit, the applicant shall complete a UDO checklist and secure a signed review by a designated member of the Pawleys Island Planning

Commission.” Town of Pawleys Island, S.C., Unified Development Code § 3-6.2(A) (2015).

Section 3-6.2 further states, “(n)o building permit shall be issued by the building inspector except in conformity with the provisions of these regulations unless he receives a written order from the board of zoning appeals in the form of an administrative review or variance as provided by the zoning regulations.” Town of Pawleys Island, S.C., Unified Development Code § 3-6.2 (2015). Both the Zoning Board of Appeals and the Georgetown County Circuit Court determined that the Appellants permit and variance requests should be denied and that they were not in “conformity with the provisions of these regulations”, specifically, Section 2-10.1 of the Pawleys Island, S.C., Unified Development Code. (R. pp. 54-62); (R. pp. 1-3). The fact that the Zoning Board of Appeals and the Georgetown County Circuit Court did not look to the pre-application permit process of the UDO checklist and tutorial as a controlling authority in making its determination, but instead applied a then existing Town ordinance as its authority, is not only acceptable but a correct judicial form for such scenarios.

For the above mentioned reasons Section 2-10.1 of the Town of Pawleys Island, S.C., Unified Development Code and not the pre-application permit process of the “UDO Checklist” and tutorial was the proper and only authority needed to be applied by the Zoning Board of Appeals, Georgetown County Zoning Administrator, and the Circuit Court.

III. UNDER SOUTH CAROLINA LAW, APPELLANTS ARE NOT ENTITLED TO A PERMIT FOR THEIR NOVEMBER 9, 2009 WALKWAY APPLICATION, AS IT DID NOT COMPLY WITH THE THEN-EXISTING ZONING AND LAND USE REGULATIONS.

The Appellants cite two cases to support their argument that they were entitled to a permit to build their beach walkway greater than the maximum width allowed. In Pure Oil Division v. City Columbia, a “bank proposes to utilize the corner lot of its property for a gasoline filling station, as expressly permitted by the Zoning Ordinance (emphasis added), and an application was made to the Zoning Administrator for a zoning permit for such use. The Zoning Administrator concluded that the application met all of the requirements of the ordinance and approved it but, prior to the actual issuance of the permit, the individual appellants, who reside in adjoining residential districts, appealed to the Zoning Board of Adjustment which, after a hearing, reversed the decision of the Zoning Administrator and denied the permit.” Id..... We have recognized the rule, that, when a zoning or building permit has been properly issued and the owner has incurred expenses in reliance thereon, he acquires a vested property right therein of which he cannot be deprived without cause or in the absence of public necessity.” Pure Oil Division v. City Columbia, 173 S.E.2d 140, 141 (1970).

This case differentiates from the instant case in two important and distinct ways. First, in Pure Oil Division v. City of Columbia, the Zoning administrator concluded that the application for a permit met all requirements and approved the permit. In the instant case, the permit was never approved by the building inspector. (R. pp. 4 line 4) Second, in Pure Oil Division v. City of Columbia, the building permit had been properly issued, when the owner had incurred expenses. In the instant case, the building permit was never issued, yet the Appellants built the beach walkway without properly obtaining a permit, simply relying on a tutorial and checklist, not the actual ordinance itself. Id.

The Appellant continues by citing Kerr v. City of Columbia, stating that, they are “protected even against a change in the zoning ordinance”. Kerr v. City of Columbia, 102 S.E.2d 364, 367 (1958). Appellants base their argument on the underlying premise that the UDO Checklist and tutorial are legally enforceable, and that the change thereof constitutes a change in a “zoning ordinance”. As stated above, the tutorial is not a statute or a regulation. If Appellants had followed the tutorial in completing the requisite UDO checklist when applying for a permit and not commencing construction until the receipt of that permit, then the Appellants would have been notified that their plans for their beach walkway were not in compliance with the Town of Pawleys Island Zoning ordinances.

For the above stated reasons, the Appellants are not entitled to a permit for their November 9, 2009 walkway application, as it does not comply with the then-existing zoning and land use regulations.

CONCLUSION

For the abovementioned reasons the Respondent respectfully asks this court to affirm the Final Order affirming the Zoning Board of Appeals filed December 18, 2014. The Tutorial and checklist do not constitute zoning regulations that have that have the force of law and are not a comprised part of the Town of Pawleys Island’s zoning regulations regarding allowable beach walkway width. Further, the Respondents argue that as the Checklist and Tutorial are not a part of the legislative zoning regulations passed by the Town to govern beach walkways widths, the Zoning Board of Appeals, Georgetown County Zoning Administrator, and the lower court correctly ruled by considering and applying all applicable regulations in denying the Appellants’ variance

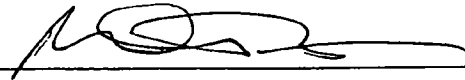
request and November 17, 2009 walkway permit application. Finally, the Respondents submit that under South Carolina law, Appellants are not entitled to a permit for their November 9, 2009 walkway application, as it does not comply with the then-existing zoning and land use regulations. Therefore the Respondent respectfully requests this Court to affirm these matters on appeal.

Respectfully submitted,

Dated at Surfside Beach, South Carolina, this 18 day of July, 2016.

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By: _____



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

RECEIVED

JUL 22 2016

SC Court of Appeals

Larry B. Hyman, Jr., Circuit Court Judge

APPELLATE CASE NO. 2016-000029

Robert and Pamela Wilkes,.....Appellants,

v.

Town of Pawleys Island,
Georgetown County Planning Commission.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

July 20, 2016


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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Robert and Pamela Wilkes, Appellants,

v.

Town of Pawleys Island and Georgetown County
Planning Commission, Respondents.

Appellate Case No. 2016-000029

Appeal From Georgetown County
Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-096
Submitted January 1, 2017 – Filed March 8, 2017

AFFIRMED

Brandon Todd Reeser, of Wilson & Heyward, LLC, of
Charleston, for Appellants.

Norwood David DuRant, Jr., of Law Offices of N. David
DuRant & Associates, of Surfside Beach, for Respondent
Town of Pawley's Island.

Natale Fata, of Nate Fata, PA, of Surfside Beach, for
Respondent Georgetown County Planning Commission.

PER CURIAM: Robert J. Wilkes and Pamela J. Wilkes appeal the circuit court's order affirming a decision by the Town of Pawleys Island and Georgetown County Planning Commission (together "the Town"), which denied their request for a land variance, arguing: (1) the Town's Unified Development Ordinance checklist and tutorial constitute a zoning regulation that has the full force of law; (2) because the Town's Unified Development Ordinance checklist and tutorial constitute a zoning regulation, the Zoning Board of Appeals, Georgetown County Planning Commission, and the circuit court erred by not considering all applicable zoning regulations; and (3) they are entitled to their building permit as it complied with then-existing zoning and land-use regulations. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in finding the checklist and tutorial did not constitute a zoning regulation: *Black v. Lexington Cty. Bd. of Zoning Appeals*, 396 S.C. 453, 457, 722 S.E.2d 22, 24 (Ct. App. 2012) ("On appeal, the findings of fact by the Board shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence."); *id.* at 457-58, 722 S.E.2d at 24 ("In reviewing the questions presented by the appeal, the [reviewing] court shall determine only whether the decision of the Board is correct as a matter of law." (quoting *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004))); *Eagle Container Co., LLC v. Cty. of Newberry*, 379 S.C. 564, 570-71, 666 S.E.2d 892, 896 (2008) ("If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." (quoting *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994))); *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011) ("[W]e will reject an agency's interpretation if it conflicts with the statute's plain language.").

2. As to whether the circuit court considered all zoning regulations and whether a permit was warranted: *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding the appellate court need not address remaining issues when disposition of prior issue is dispositive).

AFFIRMED.

HUFF and SHORT, JJ., and MOORE, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2016-000029

RECEIVED
MAR 22 2017
SC Court of Appeals

Robert and Pamela Wilkes,

Appellants,

v.

Town of Pawleys Island,
Georgetown County Planning
Commission,

Respondents.

MOTION TO RECONSIDER

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Attorney for Appellants

Appellants Robert & Pamela Wilkes file this Motion for Reconsideration and Memorandum in Support of said Motion in accordance with Rules 221 and 240, SCACR after the Court filed its Unpublished Opinion, 2017-UP-096, on March 8, 2017. The points overlooked or misapprehended by the Court are the following:

1. The Court's opinion suggests that the determination of whether the UDO Checklist and Tutorial constituted a zoning regulation is a finding of fact as opposed to a holding of law. Appellants contend that such a determination is a matter of law that is reviewed by this Court de novo.
2. Appellants seek review of whether the lower court's determination that Section 3-6.2(a) of the Town's Universal Development Code and the incorporated UDO Checklist and Tutorial are not part of the Town of Pawleys Island's regulatory zoning scheme. The applicability of these ordinances and regulations were never considered by the Zoning Board of Appeals.
3. When a statute's language is plain and unambiguous, there is no need to employ the rules of statutory construction to determine the intent of the legislature in enacting the specific statute. Appellants request the Court to address whether Section 3-6.2(a) of the Town's Universal Development Code and the incorporated UDO Checklist and Tutorial are part of the same "general statutory law," which must be read and construed together with each statute considered by this Court, the lower court, and the Zoning Board of Appeals.
4. The Court's March 8, 2017 Unpublished Opinion fails to address Issues Two and Three contained in Appellants' Final Brief, which Appellants contend are properly before the Court.

[Signature Page to Follow]

Respectfully submitted,

March 21, 2017



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2016-000029

Robert and Pamela Wilkes,

Appellants,

v.

Town of Pawleys Island,
Georgetown County Planning
Commission,

Respondents.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO RECONSIDER

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Appellants Robert and Pamela Wilkes respectfully submit this Memorandum in Support of their Motion for Reconsideration of this Court's Unpublished Opinion filed on March 8, 2017. This Court's opinion failed to discuss or analyze critical issues presented in this appeal and fails to cite supportive legal authority applicable to the case before it.

1. THE COURT CITES AN INCORRECT STANDARD OF REVIEW.

As a threshold issue, the Court notes that it is applying the standard of review governing factual findings made by the Zoning Board of Appeals. Indeed, Appellants contend the sole issue decided in its March 8, 2017 opinion is a pure matter of law – whether the Zoning Board of Appeals and the lower court should have applied Section 3-6.2(A) and the incorporated UDO Checklist and Tutorial as an ordinance applying to the construction of Appellants' beach walkway. "Issues involving the construction of ordinances are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." Eagle Container Co., LLC v. Cnty. of Newberry, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008). As such, the narrower standard of review appropriate for factual determinations by the Zoning Board of Appeals is improper in this case.

2. THE COURT FAILS TO CONSIDER WHETHER SECTION 3-6.2 OF THE TOWN OF PAWLEYS ISLAND UNIFIED DEVELOPMENT CODE APPLIES TO THE CONSTRUCTION OF APPELLANT'S BEACH WALKWAY.

In its March 8, 2017 Opinion, the Court appears to affirm the lower court's opinion based on the clear language of a statute. However, the issue before the Court is how, as a matter of law, numerous statutes interact as a complete regulatory scheme. Thus, it is unclear from the opinion which statute the Court considers to be "plain and unambiguous." Both the lower court in its December 21, 2015 Order and this Court in its March 8, 2017 Opinion through affirmation, hold without analysis that the UDO Checklist and Tutorial are not part of the Town's regulatory

scheme governing beach walkways. Appellants would request this holding to be directly addressed as there is no dispute that the Sections 2-10.1 and 3-6.2 of the Towns Unified Development Code are ordinances passed by the Town. Section 3-6.2(A) specifically states that the UDO Checklist and Tutorial be completed before any building permit is issued. (R. p. 81) There is also no dispute that the Town has, by ordinance, amended the UDO Checklist and Tutorial and intended them to have the force of law. (R. p. 82.) Appellants contend that the clear and unambiguous intent of the Town was to enforce the UDO Checklist and Tutorial's terms, which govern beach walkways, via the requirement that such be completed and reviewed by a Town official before any beach walkway permit be issued as required by Section 3-6.2(A). (R. p. 81.) The Zoning Board of Appeals, without explanation, clearly ignored the UDO Checklist and Tutorial even after recognition from one of its members that it "was in part of the ordinance" governing beach walkways. (R. p. 61, lines 17-21)

"All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." McClanahan v. Richland Cnty. Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). The essence of Appellants' issue before the lower court and this Court is whether the Town's intent to enforce the UDO Checklist and Tutorial's terms should be ignored when they clearly govern the construction and use of beach walkways as part of the Unified Development Code.

3. THE LOWER COURT'S ORDER AND THIS COURT'S OPINION FAIL TO READ THE TOWN'S APPLICABLE ORDINANCES AND REGULATIONS AS A COMPLETE STATUTORY SCHEME.

Statutes that are part of the same act "must be read together." Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). "[S]tatute[s] must be read as a whole, and sections which are part of the same general statutory law must be construed together and each given effect" if reasonable. Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992) (citation omitted). As stated previously, the Zoning Board of Appeals failed to consider the applicability of Section 3-6.2 and the incorporated UDO Checklist and Tutorial even after admission that the UDO Checklist and Tutorial was "part of the ordinance" regulating Appellants' walkway. In affirming the Zoning Board of Appeals, the lower court failed to explain why it should not read all sections of the Unified Development Code governing beach walkways together. Appellants contend that Sections 2-10.1, 3-6.2, and the ordinance-enforced UDO Checklist and Tutorial should be construed and given effect together. Failure to do so by the Zoning Board of Appeals and the lower court was improper as a matter of law. Indeed, the lower court was bound to read all applicable ordinances in Appellants' case such "that no word, clause, sentence, provision, or part shall be rendered surplusage or superfluous." Had Section 2-10.1 been sufficient as the governing ordinance, there would have been no need for the Town to have enacted the document requirements of Section 3-6.2 or to amend and maintain the UDO Checklist and Tutorial by ordinance. Matter of Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citing 82 C.J.S. Statutes § 346).

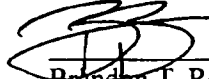
CONCLUSION

In its March 8, 2017 Unpublished Opinion, this Court, like the lower court and the Zoning Board of Appeals before it, did not consider all of the applicable zoning ordinances and amendments applicable to the construction of Appellants' walkway. Not only has the Town of Pawleys Island made its intent to enforce the UDO Checklist and Tutorial's provisions clear, but the Zoning Board of Appeals was aware of their place in the Town's statutory scheme. The Town should not now be able to selectively choose what ordinances and regulations it will enforce depending on the result it seeks, and Appellants were entitled to have full consideration of their case before the Zoning Board of Appeals. Failure to properly consider all applicable ordinances was an error of law that must be reversed. Appellants further request that this Court consider and hold as to Issues Two and Three as they contend such are properly before the it.

[Signature Page to Follow]

Respectfully submitted,

March 21, 2017



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2016-000029

RECEIVED

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SC Court of Appeals

Robert and Pamela Wilkes,

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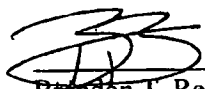
Town of Pawleys Island,
Georgetown County Planning
Commission,

Respondents.

PROOF OF SERVICE

I certify that I have served Appellants' Motion to Reconsider and Memorandum of Law in Support of Appellants' Motion to Reconsider on the Town of Pawleys Island by depositing a copy in the United States Mail, postage prepaid, on March 21, 2017, addressed to its attorneys of record, N. David DuRant and Natale Fata, at their respective addresses of P.O. Box 14722 and P.O. Box 16620, Surfside Beach, SC 29587 as well as the Office of Court Administration by depositing said copies in the United States Mail, postage prepaid, on March 21, 2017 at its address of 1015 Sumter Street, Suite 200, Columbia, SC 29201.

March 21, 2017



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

RECEIVED

Larry B. Hyman, Jr., Circuit Court Judge

MAR 31 2017
SC Court of Appeals

APPELLATE CASE NO. 2016-000029

Robert and Pamela Wilkes,.....Appellants,

v.

Town of Pawleys Island,
Georgetown County Planning Commission.....Respondents.

RESPONDENTS' OPPOSITION TO APPELLANTS MOTION TO RECONSIDER

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The Respondents file this return to the Appellants Motion for Reconsideration and Memorandum in Support of said Motion in Accordance with Rule 240 of SCACR. South Carolina Court of Appeals filed its Unpublished Opinion, 2017-UP-096, on March 8, 2017. In Response to Plaintiff arguments:

1. This Court correctly cites two cases; *Black v. Lexington Cty. Bd. Of Zoning Appeals* and *Austin v. Bd. Of Zoning Appeals*, to demonstrate the proper Standard of Review.
2. This Court's affirmation that the UDO Checklist and Tutorial did not constitute a zoning regulation was proper. This Court cites *CFRE, LLC v. Greenville Cty. Assessor*, which states "We will reject an agency's interpretation if it conflicts with the statute's plain language." *CFRE, LLC v. Greenville Cty. Assessor*, 312 S.C. 67, 77, 716 S.E.2d 877, 882 (2011).
3. This Court's affirmation that the UDO Checklist and Tutorial did not constitute a zoning regulation was proper, and therefore the court did not need to address "general statutory law" in regards to the above stated checklist and tutorial.
4. This Court properly addressed the Appellants' Issues Two and Three.

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Respectfully submitted,

Dated at Surfside Beach, South Carolina, this 30 day of March, 2017.

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ATTORNEY FOR Respondents

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Norwood D. DuRant, Jr. Esquire

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

Larry B. Hyman, Jr., Circuit Court Judge

APPELLATE CASE NO. 2016-000029

RECEIVED

MAR 31 2017

SC Court of Appeals

Robert and Pamela Wilkes,.....Appellants,

v.

Town of Pawleys Island, /
Georgetown County Planning Commission.....Respondents.

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION OF APPELLANTS

MOTION TO RECONSIDER

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Attorney for Respondent

The Respondents file and submit this Memorandum in Opposition to the Appellants' Motion to Reconsider this Court's Unpublished Opinion filed on March 8, 2017.

1. This Court did not cite an incorrect Standard of Review.

This Court correctly cites both *Black v. Lexington Cty. Bd. Of Zoning Appeals* and *Austin v. Bd. Of Zoning Appeals*. First, in *Black v. Lexington Cty. Bd. Of Zoning Appeals*, the court states, "On appeal, the findings of fact of the Board shall be treated in the same manner as findings of fact by a jury, and the court shall take no additional evidence." *Black v. Lexington Cty. Bd. Of Zoning Appeals*, 396 S.C. 453, 457-58, 722 S.E.2d 22, 24 (Ct. App. 2012). Secondly, in *Austin v. Bd. Of Zoning Appeal*, the court states "In reviewing the questions presented by the appeal, the [reviewing] court shall determine only whether the decision of the Board is correct as a matter of law." *Austin v. Bd. Of Zoning Appeal*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004).

This Court correctly cites and applies the proper Standard of Review.

2. This Court's affirmation of the lower court's decision did consider the Town of Pawleys Island Unified Development Code and its application.

This court cites *Eagle Container Co., LLC v. Cty. Of Newberry*, which states "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning". *Eagle Container Co., LLC v. Cty. Of Newberry*, 379 S.C. 564, 570-71, 666 S.E.2d 892, 896 (2008). This Court further cites *CFRE, LLC v. Greenville Cty. Assessor*, which states "We will reject an agency's interpretation if it conflicts with the statute's

plain language.” *CFRE, LLC v. Greenville Cty. Assessor*, 312 S.C. 67, 77, 716 S.E.2d 877, 882 (2011).

The Court by citing these two cases, demonstrated that they considered Section 3-6.2 of the Town of Pawleys Island Unified Development Code as plain and unambiguous and that the UDO Checklist and Tutorial did not constitute a zoning regulation, but an “agency’s interpretation” of the said Code. Therefore, this Court’s affirmation of the lower court’s decision did consider the Town of Pawleys Island Unified Development Code and its application.

3. This court properly interpreted the Town of Pawleys Island Unified Development Code.

The Appellants argue that this Court failed to look at the entire Town of Pawleys Island Unified Development Code as a complete statutory scheme. However this court cites *CFRE, LLC v. Greenville Cty. Assessor*, which states “We will reject an agency’s interpretation if it conflicts with the statute’s plain language.” *CFRE, LLC v. Greenville Cty. Assessor*, 312 S.C. 67, 77, 716 S.E.2d 877, 882 (2011). The makeup of the actual UDO Checklist and the Tutorial is an interpretation by an agency that directly conflicts with the Town of Pawleys Island Unified Development Code. There was no need for this court to make an interpretation of a statutory scheme when the Appellants base their entire appeal off a non-statutory document.

CONCLUSION

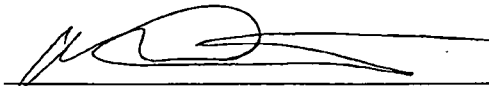
In conclusion, this Court’s affirmation that the UDO Checklist and Tutorial did not constitute a zoning regulation was proper, and that the disposition of this issue being dispositive was also proper.

Respectfully submitted,

Dated at Surfside Beach, South Carolina, this 30 day of March, 2017.

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

Larry B. Hyman, Jr., Circuit Court Judge

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SC Court of Appeals

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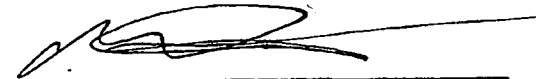
v.

Town of Pawleys Island,
Georgetown County Planning Commission.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that the Respondents' Memorandum of Law in Opposition of Appellants' Motion to Reconsider and Respondents' Opposition of Appellants' Motion to Reconsider complies with Rule 211(b), SCACR.

March 30, 2017



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THE STATE OF SOUTH CAROLINA
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Larry B. Hyman, Jr., Circuit Court Judge

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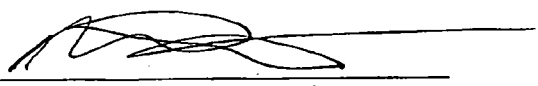
v.

Town of Pawleys Island,
Georgetown County Planning Commission.....Respondents.

PROOF OF SERVICE

I certify that I have served the Respondents' Memorandum of Law in Opposition of Appellants' Motion to Reconsider and Respondents' Opposition of Appellants' Motion to Reconsider to the Attorney for Appellants by depositing a copy of it in the United States Mail, postage prepaid, on March 30, 2017, addressed to Brandon T. Reeser, Esquire, P.O. Box 13177, Charleston, SC 29422.

March 30, 2017


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The South Carolina Court of Appeals

Robert and Pamela Wilkes, Appellants,

v.

Town of Pawleys Island, Georgetown County Planning
Commission, Respondents.

Appellate Case No. 2016-000029

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Gaff

J.

Paul G. Short, Jr.

J.

James E. Moore

A.J.

Columbia, South Carolina

FILED

cc:

Brandon Todd Reeser, Esquire
Natale Fata, Esquire
Norwood David DuRant, Jr., Esquire
The Honorable Larry B. Hyman, Jr.

May 24, 2017