THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

Larry B. Hyman, Jr., Circuit Court Judge

APPELLATE CASE NO. 2017-001402

Robert and Pamela Wilkes,.....Petitioners,

v.

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

RETURN TO PETITION

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TABLE OF CONTENTS

COUNTER QUESTIONS PRESENTED

I. DID THE COURT USE THE CORRECT STANDARD OF REVIEW?

II. DID THE COURT ERR IN THE RULING THAT THE MANDATORY UNIFORM DEVELOPMENT CHECKLIST AND TUTORIAL IS NOT A BINDING REGULATION OF THE TOWN OF PAWLEYS ISLAND?

III. DID THE COURT ERR WHEN RULING THE ZONING BOARD OF APPEALS, GEORGETOWN COUNTY ZONING ADMINISTRATOR, AND LOWER COURT CORRECTLY CONSIDERED 2-10.1 OF THE TOWN OF PAWLEYS ISLAND UNIFORM DEVELOPMENT CODE AS THE APPLICABLE ZONING REGULATION GOVERNING PETITIONERS' VARIANCE REQUEST AND NOVEMBER 17, 2009 PERMIT APPLICATION?

IV. DID THE COURT ERR IN RULING THAT PETITIONERS WERE NOT ENTITLED TO A BUILDING PERMIT FOR THEIR NOVMEBER 17, 2009 WALKWAY PERMIT APPLICATION WHEN PETITIONERS DID NOT COMPLY WITH TOWN ORDINANCES AND LAWFUL EXCEPTIONS GOVERNING WALKWAY WIDTH?

STATEMENT OF THE CASE

Robert J. Wilkes and Pamela J. Wilkes (hereinafter, "Petitioners") own property located at 302 Atlantic Avenue within the municipality of Pawleys Island. The Petitioners 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 Petitioners applied for a permit for said walkway on June 25, 2009. (R. p. 4 line 3). Thereafter, a walkway was constructed on the Petitioner's 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 Petitioners 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 Petitioners submitted a variance request to the Zoning Board of Appeals and on November 24, 2009 the Petitioners' request was denied. (R. pp. 12-14). On Nov. 17, 2009 the Petitioners 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 Petitioners 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). Petitioners 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 Petitioners' Motion by written Order filed on December 21, 2015 and Petitioners submitted their Notice of Appeal on January 4, 2016. (R. pp. 4-11). The Court of Appeals filed a two page unpublished decision affirming the lower court on March 8, 2017. The Petitioners filed a Petition for Rehearing on March 22, 2017 and the Court of Appeals denied the Petition on May 24, 2017.

The Petitioners contend that the Court of Appeals erred in affirming the lower court's decision in affirming the denial of their dock permit. Specifically, the Petitioners 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 Petitioners 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 Petitioners 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.

ARGUMENT

I. DID THE COURT USE THE CORRECT STANDARD OF REVIEW?

The Petitioners argue that the Court of Appeals failed to apply the proper standard of review. More specifically the Petitioners believe their appeal should be subject to de novo review. The Petitioners cite Catawba Indian Tribe v. State, as an authority to bolster their argument that the Court erred in its standard of review. In Catawba Indian Tribe v. State, there is no mention of "de novo review." In fact, Catawba Indian Tribe v. State states:

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). If a statute's language is plain, unambiguous, and conveys a clear meaning, then "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). Catawba Indian Tribe v. State, 372 S.C. 519, 525, 642 S.E.2d 751, 754 (2007).

In our case, the Court of Appeals essentially cites the same interpretation of the law in their affirmation of the lower court's decision. The Court of Appeals, quoting Miller v. Doe 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." Miller v.

Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994). Further, the Court of Appeals quotes CFRE, LLC v. Greenvill Cty. Assessor, "[W]e will reject an agency's interpretation if it conflicts with the statute's plain language." CFRE, LLC v. Greenvill Cty. Assessor, 395 S.C. 67, 77, 716 S.E.2d 877,882 (2011).

For the reasons set forth above the court in this case used the proper standard of review.

II. THE COURT CORRECTLY RULED THAT 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. Finally, in the beginning of the Unified Development Code § 3-6.2, which is not cited by the Petitioners, the ordinance states the following:

> 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 Petitioners argue that the Court of Appeals ignores Section 3-6.2(A) of the Unified Development Ordinance and the UDO Checklist and Tutorial. However, the Court of Appeals 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 and 2-10.1 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, the Court of Appeals properly analyzed the Pawleys Island Town Ordinances.

III. THE COURT OF APPEALS CORRECTLY RULED THAT 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 PETITIONERS' 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 Petitioners' 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 Petitioner argues that the Court of Appeals failed to recognize that a governing or judicial body has not considered the applicability to Section 3-6.2(A). The beginning of Section 3-6.2 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 Petitioners 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 the Court of Appeals correctly ruled that 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.

IV. THE COURT WAS CORRECT IN RULING THAT THE PETITIONERS 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 Petitioners 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. First, 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. In our case the way in which the Petitioners proposed to use their property was expressly prohibited use by the 2-10.1 of the Town of Pawleys Island, S.C., Unified Development Code. The Petitioners continue 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). Petitioners base this comparison of cases 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 Petitioners had truly followed the tutorial, as they claim, in completing the requisite UDO checklist when applying for a permit, they would have not commenced construction until the receipt of a permit. The Petitioners, whose permit would have been denied, 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 Court of Appeals correctly ruled in affirming the lower court's decision that the Petitioners 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 deny the Petitioners' Petition for Writ of Certiorari

Respectfully submitted,

Dated at Surfside Beach, South Carolina, this 11 day of July, 2017.

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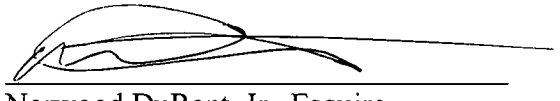
PROOF OF SERVICE

I certify that I served the Return to Petition of Respondent to the Attorney for Petitioners by depositing a copy of it in the United States Mail, postage prepaid, on July 12, 2016, addressed to Brandon T. Reeser, Esquire, P.O. Box 13177, Charleston, SC 29422.

July 12, 2017



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