

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUL 24 2017

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-096 (S.C. Ct. App. Filed March 8, 2017)
Appellate Case No. 2017-001402

Robert and Pamela Wilkes,

Petitioners,

v.

Town of Pawleys Island,
Georgetown County Planning
Commission,

Respondents.

REPLY  OF PETITIONERS

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

Other Counsel of Record:

N. David DuRant
P.O. Box 14722
Surfside Beach, SC 29587
(843) 650-7800
Attorney for Respondent

Natale Fata
P.O. Box 16620
Surfside Beach, SC 29587
(843) 238-2676
Attorney for Respondent

INDEX

Table of Authorities ii

Arguments in Reply 1

 1. THIS COURT SHOULD GRANT CERTIORARI AS THE COURT OF APPEALS INCORRECTLY APPLIED AN IMPROPER STANDARD OF REVIEW IN THE PRESENT CASE1

 2. THE TERMS OF SECTION 3-6.2 AND THE TOWN’S ACTIONS REGARDING THE AMENDMENT AND ENFORCEMENT OF SECTION 3-6.2(A) AND ITS UDO CHECKLIST APPLICATION CLEARLY DEMONSTRATE THE APPLICATION’S INTEGRATION INTO THE TOWN’S ZONING AND LAND USE REGULATION SCHEME2

 3. PETITIONERS ARE ENTITLED TO A PERMIT FOR THEIR BEACH WALKWAY PURSUANT TO THEIR NOVEMBER 17, 2009 BUILDING PERMIT APPLICATION.....5

Conclusion6

TABLE OF AUTHORITIES

CASES

Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 377 S.E.2d 569 (1989).....2

Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 642 S.E.2d 751 (2007)1

Kerr v. City of Columbia, 232 S.C. 405, 102 S.E.2d 364 (1958).....5

Pure Oil Division v. City of Columbia, 254 S.C. 28, 173 S.E.2d 140 (1970)5

Smalls v. Weed, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987)2

State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012)1

STATUTES

S.C. Code Ann. § 5-7-260 (1976).....3

ORDINANCES

Town of Pawleys Island, S.C., Unified Development Code § 3-6.2 (2015).....2

Town of Pawleys Island, S.C., Unified Development Code § 3-6.2(A) (2015) 2-4

Town of Pawleys Island, S.C., Ordinance 2009-16 3-4

Town of Pawleys Island, S.C., Unified Development Ordinance Checklist Application (2008)
.....3, 5

ARGUMENTS IN REPLY

1. THIS COURT SHOULD GRANT CERTIORARI AS THE COURT OF APPEALS INCORRECTLY APPLIED AN IMPROPER STANDARD OF REVIEW IN THE PRESENT CASE.

In its Return, the Town of Pawleys Island (“Town”) asserts that Catawba Indian Tribe of S.C. v. State does not stand for the proposition that de novo review applies to this case because “there is no mention of ‘de novo review’” specifically. However, Catawba Indian Tribe has long been and continues to be cited for the proposition that “[q]uestions of statutory interpretation are questions of law, which are subject to de novo review” State v. Whitner, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012) (citing Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007)). As the Town fails to cite any tenant of case or statutory law of the State of South Carolina to show that petitioners are not so entitled to full de novo review in this matter, the argument is unpersuasive.

Petitioners are entitled to full de novo review in which the Court is free to review and consider Petitioners’ argument and evidence as to the lower court’s December 21, 2015 Order with no deference to the lower court or the Town’s Zoning Board of Appeals, which failed entirely to consider whether the Section 3-6.2(A) of the Town’s Code of Ordinances applied to the construction of Petitioners’ beach walkway. (R. pp. 91-92, 96) Therefore, the Court of Appeals erred in citing and applying a standard of review that requires deference to the Zoning Board of Appeals and failed to afford Petitioners a full and complete review of the decisions of the Zoning Board of Appeals’ and the lower court to which Petitioners are entitled.

2. THE TERMS OF SECTION 3-6.2 AND THE TOWN'S ACTIONS REGARDING THE AMENDMENT AND ENFORCEMENT OF SECTION 3-6.2(A) AND ITS UDO CHECKLIST APPLICATION CLEARLY DEMONSTRATE THE APPLICATION'S INTEGRATION INTO THE TOWN'S ZONING AND LAND USE REGULATION SCHEME.

The Town further argues that the UDO Checklist application is not a zoning regulation or ordinance without citation to authority or response to the numerous portions of the record that establish its importance to and integration with the Town's building permit application process. In its return, the Town fails to address the text of 3-6.2(A) itself, which states unambiguously 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. The approved checklist will become a part of the building permit application process . . ."

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

In its return, the Town references the first portion of Section 3-6.2, which states that a building permit will not issue "except in conformity with the provisions of these regulations." Town of Pawleys Island, S.C., Unified Development Code § 3-6.2 (2015). It is undisputed that Section 3-6.2(A) is contained within the same ordinance cited by the Town, and if Section 3-6.2 has the force of law, then Section 3-6.2(A) is, by its terms, a provision that a landowner must conform to before a building permit is issued. As such, Section 3-6.2 and Section 3-6.2(A) are complimentary statutes and must be read together. 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). Neither the lower court and the Court of Appeals properly considered the application of Section 3-6.2 or 3-6.2(A) in the present case, which was a clear error of law.

Section 3-6.2(A) mandates that a UDO Checklist application be completed before any building permit issues, that a member of the Town's Planning Commission review and sign the completed UDO Checklist, and that the UDO Checklist becomes part of an applicant's building permit application. The Town seeks to characterize the ordinance as lacking the force of law rendering the entire UDO Checklist application superfluous despite its clear incorporation into the building permit process: if an applicant does not absolutely comply by completing a UDO Checklist and submit it to review and signature by the Town, the subsequent building permit application is fatally incomplete. No ambiguity or interpretation exists on this issue.

In fact, the UDO Checklist application is so integral to the Town's specific beach walkway zoning scheme that soon after Petitioners applied for their beach walkway permit, the Town amended the UDO Checklist application by ordinance. The former version of the UDO Checklist application, which was in effect at the time Petitioners' beach walkway permit application was filed in November of 2009, read as follows:

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 Application, p. 4 (2008), R. p. 81.

In December of 2009, the Town amended the above-cited language by ordinance to 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.

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

As the UDO Checklist application was amended by the Town via ordinance, it must in fact be an ordinance, particularly as the Town has expressed a clear, unambiguous intent to enforce the UDO Checklist application's terms. See Id. Further, pursuant to its newsletters and communications with its residents, the Town continues to allow a six (6) foot long variance from Section 2-10.1's four (4) foot maximum width limit, an amendment to Section 2-10.1 that appears nowhere in the Town of Pawley's Island Code of Ordinances other than in the UDO Checklist application required under Section 3-6.2(A).

In effect, the Town is asking this Court to sanction its ability to selectively enforce, alter, and amend its ordinances at will by declaring that the UDO Checklist application required under Ordinance Section 3-6.2(A) is not a zoning regulation only in this case. Following the numerous storms that have caused damage to the island and its residents' beach walkways, the Town continues to cite the terms of the UDO Checklist application as part of the applicable zoning regulations governing any rebuilding or repair. Nowhere in Town Ordinance Section 3-6.2, including its subsection (A), does the Town indicate that conforming with the UDO Checklist application process is optional.

3. PETITIONERS ARE ENTITLED TO A PERMIT FOR THEIR BEACH WALKWAY PURSUANT TO THEIR NOVEMBER 17, 2009 BUILDING PERMIT APPLICATION.

The Town attempts to claim that Petitioners are not entitled to a beach walkway permit because it asserts that, in essence, the requirements of Town Ordinance Section 3-6.2(A) aren't a binding, enforceable ordinance. Under the terms of the UDO Checklist application as it existed at the time Petitioners applied for their beach walkway permit, Petitioners' 6-foot beach walkway with benches was unambiguously permitted:

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

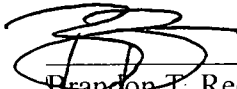
Town of Pawleys Island, S.C., Unified Development Ordinance Checklist Application, p. 4 (2008), R. p. 81.

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)). Petitioners are therefore entitled to a building permit for their beach walkway as applied for in November of 2009 without consideration of any and all subsequent changes to the Section 3-6.2(A) UDO Checklist application.

CONCLUSION

For the foregoing reasons, this Court should grant Certiorari, reverse the Unpublished Opinion of the Court of Appeals and the lower court's December 21, 2015 Order that Town Ordinance Section 3-6.2(A) does not apply to the building permit process for a beach walkway in the Town of Pawleys Island and hold that Petitioners are entitled to a permit for their beach walkway pursuant to their November 17, 2009 walkway permit application. As there was no consideration of all of the applicable zoning regulations in effect at the time of Petitioners' permit application by the lower court or Court of Appeals, Petitioners alternatively ask this Court to remand the case for a determination as to whether Appellants' November 17, 2009 permit application conforms with Town Ordinance Section 3-6.2(A) and the statutorily required, ordinance-amended UDO Checklist application as they existed at the time of Petitioners' permit application.

Respectfully submitted,



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

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 24 2017

S.C. SUPREME COURT

Unpublished Opinion No. 2017-UP-096 (S.C. Ct. App. Filed March 8, 2017)
Appellate Case No. 2017-001402

Robert and Pamela Wilkes,

Petitioners,

v.

Town of Pawleys Island,
Georgetown County Planning
Commission,

Respondents.

PROOF OF SERVICE

I certify that I have served Petitioners' Reply to Respondents' Return to Petition for Certiorari on the Town of Pawleys Island by depositing a copy in the United States Mail, postage prepaid, on July 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.

July 21, 2017



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

Other Counsel of Record:

N. David DuRant
P.O. Box 14722
Surfside Beach, SC 29587
(843) 650-7800
Attorney for Respondent

Natale Fata
P.O. Box 16620
Surfside Beach, SC 29587
(843) 238-2676
Attorney for Respondent