

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
  
Valerie Foote and Floyd Patrick, )  
 )  
Appellants )  
 )  
v. )  
 )  
City of Mauldin, )  
 )  
Respondent )  
 )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
C.A. NO.: 2016-CP-23-05465

ORDER

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SC Court of Appeals

**THIS MATTER** came before the Court on April 13, 2017 at a regularly scheduled term of non-jury motions pursuant to an Appeal from the Mauldin Board of Zoning Appeals (hereinafter “BZA”). Present before the Court were William R. McKibbon, III, attorney for the Appellant, and Daniel R. Hughes, Attorney for the Respondent, City of Mauldin. Upon the Court’s consideration of the pleadings and legal memorandum, relevant case law, arguments of counsel, as well as the entire record herein, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Appellants own property located at 101 Burning Bush Lane Lane, Greenville, SC, and located in the city limits of Mauldin and further identified by Tax Map System Number M009020116100 (hereinafter “Property”).
2. The Property is zoned R-12 (Residential) and is subject to R-12 zoning district standards pursuant to the City of Mauldin Zoning Ordinances.
3. On August 24, 2016, Appellants appeared before the BZA to request two variances
  - a. To vary the location requirement and setback standard as applied to accessory structures; and

- b. To replace their existing six (6) foot opaque fence along Miller Road with an eight (8) foot opaque fence.
4. The BZA applied the following R-12 zoning district standards to analyze Appellants' two variance requests:
  - a. Zoning Ordinance Section 10.2, Accessory Structures. This section prohibits accessory structures from being located within required setbacks.
  - b. Zoning Ordinance Section 5:1.3(a-b), Fencing. This section requires fencing located within the front yard to be decorative, non-opaque material and 48" inches or less in height.
5. On August 24, 2016, the BZA adopted by motion certain Findings and Conclusions as to Appellants' variance requests (R. p. 13-19). The Findings and Conclusions consider, among other things, the extraordinary and exceptions conditions of the Property; whether those conditions apply to other surrounding properties; whether the application of the ordinance would prohibit or unreasonably restrict the utilization of the property; and, whether granting the variance would cause substantial detriment to adjacent properties, the character of the district, or to the public good.
6. The Findings and Conclusions also set forth that the Mauldin Building and Zoning Office received multiple phone calls expressing opposition to Appellants' request for a taller fence; that the accessory building "stuck out" and was too visible; and, expressing concern that the Appellants created the privacy and noise issues when they removed trees and other vegetation from their Property.
7. The Property is surrounded by (3) street frontages, to wit: Burning Bush Lane, Pigeon Point, and Miller Road (R. p. 19). Accordingly, pursuant to the Zoning Ordinance

Definitions, Section 3:3, the Property is a “double frontage” lot (Miller Road and Pigeon Point) and a “corner lot” (Burning Bush Lane Lane). A rear setback does not apply to the Property.

8. Appellants’ home or the principal structure faces Pigeon Point.
9. The setbacks along Pigeon Point and Miller Road are twenty-five (25’) feet and the setback along Burning Bush Lane is twelve and one-half (12.5’) feet.
10. The variance requests sought by Appellants result from the Property having three street frontages and no rear setback.
11. The BZA granted Appellants’ variance request for the accessory structure. Appellants’ accessory structure is located between the principal structure and Miller Road, and within the twenty-five (25) foot setback, and it extends beyond the building line of the principal structure.
12. According to the Zoning Ordinance Section 10.2, accessory structures must be located in the side or rear yard and located so as not to project beyond the front building line of the principal structure. Furthermore, an accessory structure cannot be located within the setback. According to the zoning definitions cited above, Appellants’ accessory structure was located seven (7) – nine (9) feet from Miller Road and was also in front of the principal structure.
13. The BZA granted Appellants’ variance request for the accessory structure by finding that extraordinary and exceptional conditions pertained to the Property because the Property has three (3) street frontages each requiring a 25’ foot setback and no rear setback. The BZA found that “[s]trict application of these setback requirements would render the

majority of the [P]roperty unusable and also result in the removal of the remaining large mature trees located along the southern half of the [P]roperty.” (R. p. 14)

14. Based upon the accessory structure variance, Appellants were allowed an approximate sixteen (16') foot variance for the accessory structure and the structure was allowed to stay in front of the principal structure.
15. Appellants' second variance request sought to replace their existing six (6') foot opaque privacy fence along Miller Road and Burning Bush Lane Lane with an eight (8') foot opaque privacy fence.
16. Section 5:1.3(a-b) requires fences in the front yard to be decorative, non-opaque and 48” inches or less in height.
17. Due to the Property having street (3) street frontages, Appellants' fence along Miller Road and Burning Bush Lane must be four (4) feet in height or less and non-opaque.
18. The BZA partially granted Appellants' variance request for the fence by finding that extraordinary and exceptional conditions pertained to the Property. The BZA found that “[i]f the Property was “typical” in nature, and the (sic) Pigeon Point was the only front setback (due to it being the front of the home), Miller Road would be considered the rear of the lot and a fence could be constructed to a height of eight (8) feet (as long as) the top two (2) feet of the fence was constructed of non-opaque material.” (R. p. 15).
19. The BZA found that “[i]f the fencing requirements where (sic) to be strictly enforced, the fencing the applicant proposes along Burning Bush Lane and Miller Road would have to be non-opaque material and would be capped at 48 inches (4 feet) in height. A fence of this nature would not allot privacy to the property, and would not assist in noise mitigation.” (R. p. 14-15).

20. Consequently, the BZA allowed Appellants' to install a new six (6) foot opaque privacy fence rather than a four (4) foot non-opaque fence because a six (6) foot fence is in harmony with surrounding properties and a six (6) foot fence would aid Appellants with privacy and noise concerns. The BZA denied Appellants' request for an additional two feet of an opaque privacy fence.

#### **STANDARD OF REVIEW**

“A zoning board’s findings of fact are final and conclusive on appeal and should be treated in the same manner as a finding of fact by a jury and the court may not take additional evidence. *S.C. Code Ann.* §6-29-840(A) (Supp. 2003). Appeal to the circuit court is only for a determination of whether the board’s decision is correct as a matter of law. On appeal from the circuit court, the Zoning Board’s decision should not be interfered with unless it is arbitrary or clearly erroneous.” *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 464, 602 S.E.2d 76, 78 (2004), *citing*, *Heilker v. Zoning Bd. Of Appeals*, 346 S.C. 401, 406, 552 S.E.2d 42, 44 (Ct. App. 2001); *Rest. Row Assocs. v. Horry County*, 327 S.C. 383, 389, 489 S.E.2d 641, 644 (Ct. App. 1997).

#### **CONCLUSIONS OF LAW**

Section 3.3 of the City of Mauldin Zoning Ordinances defines a Double Frontage Lot as follows: “A lot which extends through a block having frontage on two (2) streets” and a Corner Lot as follows: “A lot abutting upon two (2) or more streets at their intersection.” The aerial map of the Property supports the BZA’s finding that the Property has three (3) street frontages, no rear yard, and is correctly defined as both a double frontage lot along Pigeon Point and Miller Road and a corner lot along Burning Bush Lane. Therefore, the Court finds reasonable that the

BZA applied front yard fencing requirements to Appellants' variance request for an eight (8') foot fence along Miller Road and Burning Bush Lane.

The Findings and Conclusions demonstrate that the BZA made its decision based upon a careful review of the extraordinary and exceptional conditions of the Property; the applicable Zoning Ordinances; and, the Appellants' need for privacy and noise mitigation. In fact, the BZA's decision gave Appellants relief from a strict interpretation of the Zoning Ordinance that would have required Appellants' fence to be non-opaque and no more than four (4') feet in height by allowing Appellants to construct a six (6') foot opaque privacy fence.

The Court finds the BZA's Findings and Conclusions regarding Appellants' variance request from Zoning Ordinance Section 5:1.3(a-b) was reasonable and supported by the Record. Therefore, the Court denies this appeal.

**IT IS SO ORDERED.**

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The Honorable Edward W. Miller  
Thirteenth Judicial Circuit

\_\_\_\_\_, 2017  
Greenville, South Carolina



Greenville Common Pleas

**Case Caption:** Valerie Foote , plaintiff, et al VS Mauldin City Of  
**Case Number:** 2016CP2305465  
**Type:** Order/Other

So Ordered

s/ Edward W. Miller