

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2009-CP-40-01307  
C/A NO.: 2013-CP-40-02159

Frieda H. Dortch,

Petitioner,

vs.

**ORDER**

City of Columbia, Planning & Development  
Services/Zoning Division a/k/a City of  
Columbia Board of Zoning Appeals,

Respondent.

**THIS MATTER COMES BEFORE THE COURT** upon two separate appeals filed by Petitioner Frieda H. Dortch (Appellant) in which the Appellant seeks for the court to overturn various decisions rendered by the City of Columbia, Planning & Development Services/Zoning Division a/k/a the Board of Zoning Appeals (Respondent or BOZA).

**PROCEDURAL HISTORY**

By way of background, Appellant owns a two story duplex located at 825 and 825 ½ Heidt Street (the Duplex). App’s Br. pg. 2. The Duplex has been “an up-and-down duplex since the 1960s or before”, which is around the time Appellant’s family acquired the Duplex. Id. at pg. 3. The Duplex “has no internal stairs, has separate heat systems, separate wiring systems, separate utility meters [and] a different floor plan in the upper unit from the lower unit”. Id. A fire had occurred to the rear of the Duplex in April 2004, which damaged parts of the Duplex giving rise to the need for repairs. Id. at pg. 4.

On May 14, 2008, Appellant, acting without counsel, filed an Application for a Certificate of Zoning Compliance-Nonconforming with Respondent seeking “grandfather status” for the nonconforming use of the vacant Duplex. 2009 Record at pg. V-000016. The Zoning Administrator denied this request, and Appellant applied for administrative review of the Administrator’s determination, which is done by BOZA. 2009 Record at pg. V-000001; City

Code § 17-111. After a hearing on September 9, 2008, BOZA denied Appellant's request for the certificate. 2009 Record at pg. AA-000039.

During this time, on June 11, 2008, Appellant filed an Application for Variance, seeking a variance from the lot size requirement for a dwelling unit in order to reestablish the Duplex. Id. at pg. V-000005. After a hearing on July 8, 2008, BOZA denied the Application for Variance. BOZA's Jan. 16, 2009 Order. Following both of these denials from BOZA, Appellant filed a Petition/Appeal with the circuit court on February 24, 2009, and an Amended Petition of Appeal on February 26, 2010 (hereinafter the 2009 Appeal) seeking to appeal the two aforementioned decisions rendered by BOZA. The record on appeal for the 2009 Appeal consists of Appellant's petitions for appeal and those items filed by Respondent on January 5, 2010. BOZA's written decisions were filed by Respondent on April 15, 2010, as exhibits to Respondent's Motion to Dismiss and are also part of the record considered by this court.

On September 1, 2010, the circuit court granted Respondent's Motion to Dismiss the 2009 Appeal based on untimeliness of the filed appeal. Following the dismissal, on September 17, 2010, Appellant filed a Motion to Reconsider, which went unheard until September 15, 2017.

While the 2009 Appeal was still pending in the circuit court, Appellant, again acting without counsel, filed another Application for Variance on November 14, 2012. Dortch, No. 2013-002686, 2015 WL 7686970, at \*1; 2013 Record at pg. 026. On February 8, 2013, after obtaining counsel, Appellant amended her Application for Variance. 2013 Record at pg. 40. After a hearing was held on February 12, 2013, BOZA denied Appellant's applications by written decision on March 12, 2013, and Appellant appealed the denial to the circuit court (hereinafter the 2013 Appeal). BOZA's Feb. 12, 2013 Order. The record on appeal in the 2013 Appeal consists of Appellant's Petition of Appeal filed on April 11, 2013, and those items filed

by Respondent with its Return on April 30, 2013, along with its Motion to Dismiss the 2013 Appeal.

On August 19, 2013, the circuit court granted Respondent's Motion to Dismiss the 2013 Appeal on the grounds of res judicata and collateral estoppel; this order was filed with the Clerk of Court on September 10, 2013. Following this dismissal, on December 18, 2013, Appellant filed a Notice of Appeal of the 2013 Appeal with the South Carolina Court of Appeals. On November 25, 2015, the South Carolina Court of Appeals remanded the 2009 Appeal for a ruling on Appellant's still unheard Motion to Reconsider dated September 17, 2010, pursuant to authorities rendering the 2009 Appeal timely. Dortch v. City of Columbia Planning & Dev. Servs./Zoning Div., No. 2013-002686, 2015 WL 7686970, at \*1 (S.C. Ct. App. Nov. 25, 2015). The South Carolina Court of Appeals made no ruling on the 2013 Appeal. Id. As instructed, on September 15, 2017, the circuit court granted Appellant's Motion to Reconsider the 2009 Appeal on the grounds that the 2009 Appeal was filed timely, making the 2009 Appeal ripe for decision.

On November 29, 2017, Appellant filed a Motion for Relief from Order of Judgment regarding the August 19, 2013 dismissal of the 2013 Appeal based on the argument that res judicata and collateral estoppel should no longer apply because the order dismissing the 2009 Appeal was vacated.

On February 25, 2019, the circuit court consolidated the two above-captioned actions and ordered that Judge Walton J. McLeod, IV preside over all hearings regarding these matters. On March 13, 2019, Judge McLeod held a hearing in Lexington County on the merits of the pending appeals. Attorney M. Baron Stanton appeared on behalf of Appellant, and attorney Peter M. Balthazor appeared on behalf of Respondent. During the hearing, the court granted Appellant's Motion for Relief from Order of Judgment dated November 29, 2017, and heard the merits of both pending appeals.

## STANDARD OF REVIEW

The circuit court sits as the appellate court for decisions made by a board of zoning appeals. S.C. Code Ann. § 6-29-840; Austin v. Bd. Of Zoning Appeals, 362 S.C. 29, 35, 606 S.E.2d 209, 212 (Ct. App. 2004). “The findings of fact by the board of [zoning] appeals must be treated in the same manner as a finding of fact by a jury, and the [circuit] court may not take additional evidence.” S.C. Code Ann. § 6-29-840. As such, the circuit court “must determine only whether the decision of the board [of zoning appeals] is correct as a matter of law.” Id.

The circuit court’s appellate standard of review has been interpreted to require that the circuit court not disturb a board of zoning appeals’ findings unless there is no evidence reasonably supporting the board’s decision. Vulcan Materials, Inc. v. Greenville County Bd. of Zoning Appeals, 342 S.C. 480, 491, 536 S.E.2d 892, 898 (2000). A circuit court must “refrain from substituting its judgment for that of [board of zoning appeals], even if it disagrees with the decision.” Rest. Row Assocs. v. Horry Cty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

A decision of a board of zoning appeals will not be overturned unless it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion. Austin, 362 S.C. at 33, 606 S.E.2d at 211. “An abuse of discretion occurs when a . . . decision is unsupported by the evidence or controlled by an error of law.” County of Richland v. Simpkins, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002).

### **I. The 2009 Appeal**

#### **A. Appellant’s appeal from variance request and denial**

In her June 11, 2008 Application for Variance, Appellant proposed to perform “interior & exterior renovations to re-establish a duplex.” 2009 Record at pg. V-000005. The application stated the proposal for the Duplex did not conform to the zoning ordinance because the lot size was too small for a duplex. Id. at pg. V-000006. At the July 8, 2008 hearing for the Application

for Variance, evidence was presented that the lot required 10,000 square feet for Appellant's Duplex, and the subject lot's size was only 7,644 square feet. Id. at pg. V-000001. Appellant also attempted to obtain a permit to perform work on the Duplex. Id. at pgs. V-000015, V000030. However, the permit had been denied because the Duplex had been vacant for more than 12 consecutive months and had lost its claim to grandfather status. Id. at pg. V-000030. She admitted the Duplex had been vacant for more than 12 months. Id. In fact, Appellant stated the Duplex had been vacant for "about two years that [she] can account for." Id.

Appellant testified that following the fire, she planned to do a "total upgrade" to the Duplex consisting of replacing wood, painting, redoing bathrooms and bathroom fixtures, redoing the back structure of the house, and redoing windows. Id.

Even though Appellant was already planning to perform extensive renovations to the structure, she stated it would be an "economical hardship" to convert the structure to a single-family residence. Id. Appellant was unable to provide any estimates for the work and she did not demonstrate sufficiently the difference between renovating the property as a duplex compared to converting it to a single-family structure. See id. Appellant stated the Duplex would be utilized as a single-family unit if the variance was not granted, but "economically and emotionally" she was unable to "do this immediately." Id. at pg. V-000031. BOZA denied the request for a variance due to the vacancy and on the grounds that Appellant had not demonstrated there were extraordinary conditions pertaining to the Duplex. Id.

BOZA may grant a variance from the terms of the zoning ordinance "as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of [the zoning ordinance] will, in an individual case, result in unnecessary hardship, so that the spirit of [the zoning ordinance] shall be observed, public safety and welfare secured, and substantial justice done." City Code § 17-112(3)a.1. A variance may be granted in an

individual case of unnecessary hardship only upon a finding by BOZA that the following conditions have been met:

- (1) There are extraordinary and exceptional conditions pertaining to the piece of property;
- (2) The extraordinary and exceptional conditions do not generally apply to other property in the vicinity;
- (3) Because of the conditions, the application of the zoning ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

City Code § 17-112(3)b.1.(i) through (iv).

A variance applicant bears the burden of proving its entitlement to a variance and the board correctly denies a variance if the applicant fails to meet the requirements of each element of the ordinance. Rest. Row Assocs., 335 S.C. at 516, S.E.2d 442 at 446. “Granting a variance is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions.” Id. 335 S.C. at 215, 516 S.E.2d at 445-46. Generally speaking, variances are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances. 8 McQuillin, Municipal Corporations § 25:179.32 (3d ed. 2010). A variance should be strictly construed and granted only in cases of extreme hardship where the requirements of the ordinance are present. Id.

In BOZA’s decision, Appellant did not meet her burden of proving an entitlement to a variance. Her testimony and evidence consisted of nothing more than conclusory statements that the property had been constructed as a duplex, and vague assertions of an “economical hardship” if the variance was not granted. This testimony was not persuasive to BOZA in light of Appellant’s plans to conduct extensive renovations if the variance was granted. See Rest. Row Assocs., 335 S.C. at 218, 516 S.E.2d at 447 (providing financial hardship does not automatically constitute unnecessary hardship). Appellant failed to demonstrate extraordinary and exceptional

conditions pertaining to the Duplex. Appellant's evidence on this factor was that the structure had been a duplex for a long time. However, a nonconforming use of the structure, which was admitted for purposes of the hearing below, is not an extraordinary or exceptional condition pertaining to the piece of property. If this were the standard, nonconforming uses would never be amortized out of existence and would always be grounds for a variance.<sup>1</sup>

Respondent asserts that BOZA correctly decided, on the facts presented to it, there were no extraordinary and exceptional conditions pertaining to the property based on the nonconforming nature of the structure. This court agrees. BOZA, as the fact finder, can take its own view of the evidence, and this court finds there is no showing of an error of law.

B. Appellant's appeal from denial of a certificate of zoning compliance for a nonconforming use.

In her May 14, 2008 Application for Certificate of Zoning Compliance-Nonconforming, Appellant sought a zoning permit to renovate and reestablish the structure as a duplex. 2009 Record at pg. AA-000001. The Zoning Administrator determined the structure was a nonconforming use and denied the permit. *Id.* at pg. AA-000038. Thus, Appellant further sought a certificate of zoning compliance for a nonconforming use by filing an application for administrative appeal of the Zoning Administrator's decision. *Id.*

At the September 9, 2008 hearing for the Application for Administrative Appeal, evidence was presented to BOZA that a fire occurred at the property on April 11, 2004. *Id.* Water billing records indicated that water had not been provided to the property since August 9, 2005. *Id.* An inspection history noted an occupant of the property would be vacating the Duplex by November 1, 2005. Res' Br. at pg. 9; 2009 Record at pg. AA-000038. An inspection

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<sup>1</sup> In addition, a variance should not be granted the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district or to extend a nonconforming use of land. City Code §§ 17-112(3)b.2. and 17-202(d).

performed on November 7, 2005, found the Duplex had been vacated, and placards were posted stating that the Duplex was unsafe and occupancy was prohibited. Res' Br. at pgs. 9-10; 2009 Record at pg. AA-000038. Appellant stated there had been no electricity at the property since the time of the fire. 2009 Record at pg. AA-000038. At one point during the hearing, Appellant informed BOZA that her brother had lived in the Duplex for about a year after the fire. Id. However, upon questioning from the BOZA, Appellant admitted no one had lived in the property in the last 12 months prior to the hearing. Id. Appellant also stated that the Duplex had been vacant since she took full ownership of the Duplex. Id. Appellant admitted she did not attempt to obtain any type of permit for work on the Duplex until January 2007. Id. Appellant stated she took charge of the Duplex in December 2007 and "that's all I can attest to." Id. Based on the applications, submitted documents, and testimony, BOZA "found that there is no extraordinary or exceptional conditions" with Appellant's requests. BOZA's Jan. 16, 2009 Order. Thus, BOZA denied Appellant's Application for Variance. Id.

The issue facing BOZA was whether to allow the reestablishment of a nonconforming use. The term "nonconforming" is one that is "applied to lots, structures, uses of land or structures . . . which were lawful before the passage of the [zoning] ordinance . . . but which are prohibited by [the zoning ordinance] or which are not in compliance with the requirements of [the zoning ordinance]. City Code § 17-55. The City of Columbia's zoning ordinance allows nonconformities "to continue until they are removed, but not to encourage their survival." City Code § 17-201.

A nonconforming use shall not be reestablished after vacancy, abandonment, or discontinuance for any period of 12 consecutive months. City Code § 17-202(e). The burden of proving a nonconforming use is on the party claiming a prior nonconforming use. Whaley v. Dorchester County Bd. of Zoning Appeals, 337 S.C. 568, 579, 524 S.E.2d 404, 410 (1999).

Respondent asserts that BOZA did not err in finding the property was a duplex that should not be grandfathered pursuant to City Code §§ 17-55, 17-201, and 17-202(e). This court agrees. The evidence in the record shows the Duplex was vacant starting at the latest November of 2005; thus the evidence in the record reasonably supports BOZA's decision based on vacancy.

Appellant does not strenuously dispute the evidence of the vacancy. Instead, Appellant argues she has a vested constitutional right to continue the nonconforming use despite the vacancy. This court disagrees.

First, Section 17-112(1) provides that BOZA shall hear and decide appeals from any determination made by the Zoning Administrator. An issue need not have been raised during BOZA's administrative process in order to be preserved on appeal to the circuit court. Newton v. Zoning Bd. of Appeals for Beaufort Cty., 396 S.C. 112, 117, 719 S.E.2d 282, 284 (Ct. App. 2011). Instead, "the sole preservation requirement for a first-level appeal of a zoning board's decision is that an appellant must set forth his [or her] issues on appeal in a written petition and file that petition with the circuit court before the thirty-day filing period expires." Id. Here, the issue was not raised to BOZA, and it was not stated in the Petition for Appeal or the Amended Petition of Appeal.

Second, "[a] landowner acquires a vested right to continue a nonconforming use already in existence at the time his [or her] 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." Vulcan Materials Co., 342 S.C. at 498, 536 S.E.2d at 901; see Gurganious v. City of Beaufort, 317 S.C. 481, 490, 454 S.E.2d 912, 917-18 (Ct. App. 1995) ("Once a valid zoning ordinance is enacted based upon a comprehensive zoning plan, it is generally recognized that nonconforming uses detract from the public purpose to be achieved by the plan."); Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals, 423 S.C. 169, 187, 813 S.E.2d 874, 883 (Ct. App. 2018), cert.

granted (Sept. 21, 2018) (“[T]he intention of all zoning laws, as regards a nonconforming use of property, is to restrict and gradually eliminate the nonconforming use.”). “It is well settled that the right to continue a nonconforming use may be lost by abandonment.” Conway v. City of Greenville, 254 S.C. 96, 105, 173 S.E.2d 648, 652 (1970).

Appellant argues that James<sup>2</sup> and Juel<sup>3</sup> require an intent to abandon be shown before a grandfathered use can be terminated. However, James is inapposite because the City of Greenville’s zoning ordinance, by its operation, discontinued nonconforming uses without any action by the owner. James, 227 S.C. at 574, 88 S.E.2d at 665. Here, the City of Columbia’s ordinance allows nonconforming uses to remain unless the property is vacant, abandoned, or discontinued for any period of 12 consecutive months by the owner. City Code § 17-202(e).

The court in Juel addressed an ordinance stating that “any sign structure that no longer displays any sign copy shall be deemed to be an obsolete or abandoned sign.” Juel, 344 S.C. at 46, 543 S.E.2d at 539. The court in Juel concluded the sign ordinance did not provide an objective time frame for abandonment. Id. at 46, 543 S.E.2d at 540. Therefore, the court applied the common law to find the owner did not intend to abandon a sign. Id. at 48, 543 S.E.2d at 540. Here, there is no reason to resort to the common law or the intent of the owner. The City of Columbia’s ordinance includes an objective time frame for vacancy, abandonment, or discontinuance for any period of 12 consecutive months by the owner.

BOZA’s decision, which should not be disturbed if there is any evidence to support it, is supported by the objective evidence of the vacancy of the Duplex for a period greater than 12 months. Appellant’s subjective testimony regarding her intention not to abandon the Duplex’s use is not considered by this court in light of the terms of the ordinance and the evidence. See Gurganiouis, 317 S.C. at 488, 454 S.E.2d at 916 (holding an owner’s intentions are not to be

<sup>2</sup> James v. City of Greenville, 227 S.C. 565, 88 S.E.2d 661 (1955).

<sup>3</sup> City of Myrtle Beach v. Juel P. Corp., 344 S.C. 43, 543 S.E.2d 538 (2001).

regarded where a zoning ordinance contains an objective time limitation on the resumption of usage).

Appellant also argues the use is not nonconforming because the applicable zoning ordinance does not require 10,000 square feet of lot area for the Duplex. First, this position is not supported by the terms of the zoning ordinance. Section 17-275 of the zoning ordinance contains a schedule of major height and area requirements for all zoning districts.

Second, this issue could have been presented first for interpretation by the Zoning Administrator, and then appealed to BOZA if Appellant was not satisfied with the Zoning Administrator's interpretation. See City Code § 17-82 (providing the zoning administrator interprets and administers the zoning ordinance); City Code § 17-112(1) (stating BOZA shall hear and decide appeals from any determination made by the Zoning Administrator). The court notes, however, that an issue need not have been raised during BOZA's administrative process in order to be preserved on appeal to the circuit court. Newton, 396 S.C. at 117, 719 S.E.2d at 284. Instead, "the sole preservation requirement for a first-level appeal of a zoning board's decision is that an appellant must set forth his [or her] issues on appeal in a written petition and file that petition with the circuit court before the thirty-day filing period expires." Id. Here, Appellant properly filed an appeal in written petition with the circuit court before the thirty-day filing period expired, but she did not sufficiently raise the issue of whether the applicable zoning ordinance required 10,000 square feet of lot area for the Duplex pursuant to Section 17-275 of the zoning ordinance. Instead, throughout the appeals, Appellant conceded her lot was not large enough to accommodate a duplex, and she was seeking a certificate of compliance or a variance.

## **II. The 2013 Appeal**

In order to ensure the merits of both appeals are adjudicated concurrently, the court granted Appellant's Motion for Relief from Order of Judgment. The court notes that the Order

dismissing the 2013 Appeal dated August 19, 2013, was appropriate at the time. However, because the 2009 Appeal has subsequently been vacated, the court determined that the Order dismissing the 2013 Appeal based on res judicata and collateral estoppel should also be vacated. As such, the 2013 Appeal is again ripe for decision.

Appellant filed another Application for Variance on November 14, 2012. 2013 Record at pg. 026. The new Application for Variance indicated the building on the property was a duplex and did not conform to the zoning ordinance because the lot size, at 7,644 square feet, was not large enough for two dwelling units. Id.

A hearing on the matter was held on February 12, 2013. 2013 Record at pgs. 001, 022. Appellant's testimony stated the Duplex had been damaged by fire in April 2004, and her brother lived in the downstairs unit of the Duplex until about April or May of 2005. Id. at pgs. 003-006. The Application for Variance stated that extraordinary and exceptional conditions pertained to the Duplex because the structure had been a duplex for over 50 years. Id. at pg. 027. During the hearing, BOZA denied the variance, and the written Order on a Variance was issued March 12, 2013. Id. at pgs. 001, 002, 008.

In its written Order, BOZA found the Duplex is nonconforming and had been vacant since at least November 7, 2005, which is a period greater than 12 consecutive months. BOZA's Mar. 12, 2013 Order. BOZA concluded Appellant failed to meet all of the requirements for a variance. Id. Among other things, BOZA found that extraordinary and exceptional conditions do not exist for the Duplex and that Appellant had not substantiated her testimony that the zoning ordinance would unreasonably prohibit or restrict the use of the Duplex. Id.

Appellant's main argument was similar to her previous application. She continued to argue the nonconformity provided exceptional or extraordinary conditions. However, this court agrees that a property is not rendered extraordinary and exceptional simply because it was

utilized in the past as a duplex and is now nonconforming. Appellant cannot now use the loss of nonconforming status to gain back what she lost by claiming it makes the property extraordinary and exceptional.

Respondent asserts that BOZA also correctly decided, based on the facts presented to it that the denial of the variance would not effectively prohibit or unreasonably restrict the utilization of the property. The court agrees. The Duplex may still be converted and used as a single-family residence. BOZA found Appellant had not substantiated her testimony that the cost of conversion to a single-family residence would be unreasonable. Appellant testified it would cost over \$100,000.00 and characterized the conversion as a “financial burden”. Appellant did not provide any written estimates or other evidence to support this cost. Appellant did not explain how this cost compared to other interior repairs she was already planning to perform. Financial burden does not necessarily constitute an unreasonable restriction. Rest. Row Assocs., 335 S.C. at 218, 516 S.E.2d at 447; see City Code § 17-112(3)b.2. (stating the fact that property may be utilized more profitably should a variance be granted may not be considered grounds for a variance).

Respondent asserts that BOZA also correctly found authorizing the variance would be of substantial detriment to the public good, and the character of the district would be harmed. The court agrees. BOZA heard evidence regarding the current density on the block. The granting of the variance would contribute to increased density. Additional density is allowed only where the lot size is adequate. Appellant’s Duplex is located in the least dense area of the City of Columbia’s general residential district. Appellant’s application stated “[m]ost of the surrounding property is already single-family” and “there are only about five duplex units in the area.” This assertion runs counter to any argument that Appellant’s Duplex would not be a detriment to the public good.

Moreover, in order to grant a variance in any case, BOZA must make a finding that the granting of a variance will be in harmony with the general purpose and intent of the zoning ordinance and will not be injurious to the neighborhood. See City Code 17-112(3)b.7. BOZA correctly concluded the requested variance would not meet this standard. The intent of the zoning ordinance is not to encourage the survival of nonconformities.<sup>4</sup> Even if this court disagreed with BOZA's decision, it cannot substitute BOZA's judgment with that of its own if there is evidence to support BOZA's decision. The court finds that there is sufficient evidence to support BOZA's decision. BOZA also correctly found Appellant did not prove the extraordinary conditions do not generally apply to other property in the vicinity. Appellant did not present sufficient evidence that use as a duplex on an undersized lot did not generally apply to other properties in the vicinity.

### **III. Conclusion**

For the reasons stated herein, this court affirms Respondent's decisions in the 2009 Appeal and the 2013 Appeal. Respondent did not err in denying the requests for a variance. Respondent did not err in finding the Duplex was not a legal conforming use.

IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]

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<sup>4</sup> BOZA also correctly found Appellant did not prove the extraordinary conditions do not generally apply to other property in the vicinity. Appellant did not present evidence that use as a duplex on an undersized lot did not generally apply to other properties in the vicinity.



Richland Common Pleas

**Case Caption:** Frieda H Dortch vs City Of Columbia Planning  
**Case Number:** 2009CP4001307  
**Type:** Order/Other

So Ordered

s/Walton J. McLeod, 2765

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FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NOs.: 2009-CP-40-01307  
2013-CP-40-02159

Frieda H. Dortch,

City of Columbia, Planning & Development  
Services/Zoning Division,

PETITIONER,

Respondent.

Submitted by: Walton J. McLeod, IV, Presiding Judge

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL; OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter comes before the court upon Petitioner Frieda H. Dortch's Motion to Reconsider filed on March 29, 2019. Counsel for Respondent City of Columbia, Planning & Development Services/Zoning declined to provide a response to the Motion to Reconsider.

Although the Petitioner does not provide a specific rule under which she brings the Motion to Reconsider, the court determined that the request made within the motion falls under Rule 59(e), SCRPC. The Petitioner requests that the court reconsider its Order dated March 25, 2019, and reverse Respondent's orders that are on appeal. Petitioner argues that the court did not rule on numerous dispositive issues presented and it significantly misapprehended the facts and numerous legal issues.

"Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)." Rule 52(a), SCRPC; see

also *Collins Music Co. v. IGT*, 353 S.C. 559, 565, 579 S.E.2d 524, 527 (Ct. App. 2002) (concluding that a circuit judge was not required to provide a detailed analysis respecting each the grounds specified in the moving party’s post-trial motions). Based on Rule 52(a), SCRCP, the court concludes that it need not provide findings of fact and conclusions of law on its decision regarding the Motion to Reconsider.

“If an opinion . . . is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.” *Id.* Upon a review of the issues presented in the Motion to Reconsider and the Order dated March 25, 2019, the court determines that its findings of fact and conclusions of law in its Order dated March 25, 2019, are sufficient. The court finds that it sufficiently addressed all applicable issues on appeal in its Order dated March 25, 2019. Further, the court concludes that it did not significantly misapprehend the facts and numerous legal issues and made no errors of law.

Accordingly, Petitioner’s Motion to Reconsider is DENIED.

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate “N/A” in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

\_\_\_\_\_  
Circuit Court Judge

\_\_\_\_\_  
Judge Code

\_\_\_\_\_  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**  
\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

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Richland Common Pleas

**Case Caption:** Frieda H Dortch vs City Of Columbia Planning

**Case Number:** 2009CP4001307

**Type:** Order/Other

So Ordered

s/Walton J. McLeod, 2765

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