STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Crescent Homes SC, LLC, Appellant, vs. City of Charleston Board of Zoning Appeals - Zoning, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-04196 **ORDER**

This matter came before me on January 6, 2022, as an appeal from a decision of the City of Charleston Board of Zoning Appeals—Zoning.

The Appellant seeks to overturn two related decisions made by the Board. The first decision was an appeal to the Board from the decision of the Zoning Administrator who concluded a proposed drive under the house garage would be a "story" for the purposes of the two and a half story height limit established by the zoning code. Second, the Appellant asked for variances on two adjacent lots to exceed the two and a half story limit if the drive under house garage is considered a "story." The Board denied the request for a variance noting the lack of hardship to the Appellant who was already permitted for a home on each lot without a drive under the house garage.

The Respondent argues this Court sitting as an appellate court should defer "to the decisions of those charged with interpreting and applying local zoning ordinances," as they are in the best position to interpret, consider and apply those local rules. Christ Cent. Ministries v. City of Columbia Bd. of Zoning Appeals , 424 S.C. 358, 818 S.E.2d 30 (Ct. App. 2018) The Appellant argues the interpretation of the language of the ordinance should be a matter of law where no deference is given to the Board's decision. Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 2015). This court concludes that regardless of the standard of deference, the decision of the Board should be affirmed with respect to both decisions.

The City has limitations on the number of stories of buildings which differ depending on the applicable zoning classification of the property. These properties are

in an SR-1 zoning classification which has a two and a half story limit on homes. Zoning Code § 54-301. The Zoning Administrator determined the proposed drive under the home garage should count as a "story" based on the definition in the zoning code. "Story" is defined in the zoning code as "that portion of a building included between the surface of any floor and the surface of the next floor above." Zoning Code § 54-120. The Appellant would like the Court to borrow from the City's stormwater management ordinance which does not use the word "story" and instead has a definition of "lowest floor" which specifically excludes a garage used solely for parking. But Respondent argues there is no reason to borrow a definition from a different ordinance for a different word. The Respondent also argues the purposes of the zoning ordinance and stormwater ordinances are different. A zoning limit on the number of stories is intended to limit the size and mass of the structure. The purpose of the stormwater ordinance is to comply with the federal flood standards which do not allow significant construction at a level prone to flooding. So, it is understandable the stormwater ordinance declares an area used only for parking does not need to be built above base flood elevation and does not count as the "lowest floor" of the structure. Further, the City notes the entire portion of the stormwater ordinance where the definition of "lowest floor" is found is only applicable in special flood hazard areas, and this is not in one of those areas. See Stormwater Ordinance § § 27-104 and -105.

Overall, the Court agrees with the Zoning Administrator and Board's affirmance of that decision that the definition of the word "story" as defined in the zoning code would seem to apply to the area between the finished concrete garage floor and the next floor above it. The Court agrees with the Respondent's position that differences in the words and purposes of the zoning ordinance versus the stormwater ordinance make it inappropriate to try to reconcile the two ordinances in this respect.

The Appellant makes a policy argument that due to increased flooding in the greater Charleston area, homebuilders should be encouraged to elevate their structures and a drive under the home garage is a popular and desirable design. But the courts cannot override the language provided by City Council on this basis. It is best for City Council to decide where a drive under the house garage design should be encouraged

or discouraged or whether it should be allowed in all neighborhoods or just some.

To the extent that the Appellants want to claim that homes in special flood zones which are required to be elevated by the stormwater ordinance have not had the lowest elevation counted as a floor by the City, the plaintiffs lack standing to assert that someone else is getting a benefit the Appellant is clearly not entitled to obtain. See ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008) (competitor did not have right to file an appeal a rezoning allowing a cell-phone tower.)

As to the variance, per City of Charleston zoning ordinance § 54-924, which tracks S.C. Code § 6-29-800, the test for a variance is as follows:

> a. there are extraordinary and exceptional conditions pertaining to the particular piece of property;
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> b. these conditions do not generally apply to other property in the vicinity;
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> c. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
>
> d. 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.

The Appellant previously obtained approval of a home that did not have a drive under the house garage. The Board discussed that there did not appear to be a showing of hardship. The Appellant also argues variances in the same subdivision were granted to this same builder by the same Board at a prior meeting. However, the Respondent argues those properties are different and the decision it made as to other properties do not necessarily apply to this property. Further there is a potential problem that if Appellant claims the properties are all the same, the standard for a variance includes the requirement that the condition creating the basis for the variance is not generally applicable to other property in the vicinity.

As to the variance portion of the Board's decision, substantial deference must be given to the Board. The Court cannot say that the Board's decision as to the denial of the variances is incorrect as a matter of law or an abuse of discretion. For these reasons, I would affirm the decision of the Board denying the variances.

For the reasons stated above, the decision of the Board of Zoning Appeals is affirmed.

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Paul M Burch
Presiding Judge

Charleston Common Pleas

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Type: Order/Other

So Ordered

s/Paul M. Burch, Judge #2048