

SOUTH CAROLINA CASE LAW UPDATE

To: Chief Administrative Officer; County Attorney
From: SCAC Legal Staff

SCAC legal staff compiles a regular update of appellate court opinions impacting county government operations. CAOs/Attorneys are encouraged to forward this update to impacted county departments.

South Carolina Court of Appeals

John's Marine Service, Inc, et al. v. Oconee County Board of Zoning Appeals, et al.
Appellate Case No. 2020-001135, Opinion No. 2022-001796. February 19, 2025

Areas of Law: Planning & Zoning, Variances.

This appeal challenged the circuit court's order affirming the Oconee County Board of Zoning Appeals' (BZA) granting of a right-of-way variance for the construction of a private road to access a proposed subdivision on Lake Keowee. Appellants argued the BZA: (1) lacked jurisdiction to determine the existence of a prescriptive easement, (2) erred in assuming Oconee County held a prescriptive easement, and (3) erred in expanding the purported easement. Appellants further contend the BZA's approval of the variance application was arbitrary and capricious. The Court of Appeals affirmed the lower court on each finding.

Specifically, the court found that the BZA acted within its jurisdiction in granting the variance. The court held that SC Code Section 6-29-800(A)(2) gives BZAs the power to hear and decide appeals for variance from zoning ordinance requirements where strict application would result in unnecessary hardship if the board makes and explains its findings in writing. In this case the BZA properly addressed only a variance from the county's right-of-way requirements and did not address the question of the prescriptive easement (including the allegation of expanding such easement.)

Next the court found that the BZA's approval of the variance was not arbitrary or capricious. The granting of a variance is a police power granted to the BZA, and the court found that such decisions are subject to judicial review only if the decision is arbitrary and has no reasonable basis to a lawful purpose. SC Code Section 6-29-800(A)(2) provides the framework for the granting of a variance. In order to grant a variance, the statute requires that the property must possess some extraordinary or exceptional condition; that does not generally apply to other property in the area; that strict application of the zoning requirement would effectively prohibit utilization of the property; and the grant of the variance would not be a substantial detriment to adjacent property.

The statute requires the BZA to make a factual determination that each of the elements provided in Section 6-29-800(A)(2) are met. The court in this case found that the BZA

did address all of the elements required and then made specific factual findings as to each element in its written order. The court found that the BZA's findings were more than supported by the evidence presented by the parties.

The [full opinion](#) can be found online.