VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 27th *day of* June, 2014.

Shri Ganesh, LLC, et al., Appellants,

against Record No. 131404
Circuit Court No. CL11-002300

City Council for the City of Hampton, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Hampton.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is reversible error in the judgment of the circuit court.

Shri Ganesh, LLC ("Shri Ganesh") owns an unimproved parcel adjacent to the Grandview Island beach in Hampton, Virginia. The parcel is located in an R-M zoning district. Trespassers drive golf carts over the parcel to and from the beach.

Shri Ganesh obtained a permit from the Virginia Marine Resources Commission to install posts on the property line to obstruct the golf carts. Shri Ganesh then sought zoning approval to install the posts. The posts would be partially buried and have an above-ground height shorter than 4 feet. They would be connected only below ground.

In August 2011, the zoning administrator determined that the posts would constitute a fence. He therefore determined that they would violate Hampton Zoning Ordinance ("HZO") § 9-1(1), which incorporates HZO § 5-1(13). According to the zoning administrator,

that provision prohibits construction of an accessory building or structure on a parcel that lacks a main building.

Shri Ganesh appealed to the board of zoning appeals ("BZA"), which affirmed the zoning administrator's determination. Shri Ganesh obtained review in the circuit court by certiorari pursuant to Code § 15.2-2314. The circuit court affirmed the BZA's decision and Shri Ganesh brought this appeal.

This Court has articulated the principles applicable here.

> When, as in the present case, the issue before the circuit court was a question of law, i.e. the meaning of certain terms used in the [zoning ordinance], the petitioners had the burden of proving that the BZA either applied erroneous principles of law or that its decision was plainly wrong and in violation of the purpose and intent of the zoning ordinance.

Adams Outdoor Adver., L.P. v. Bd. of Zoning Appeals, 274 Va. 189, 195, 645 S.E.2d 271, 274 (2007) (internal citations and quotation marks omitted). An interpretation of a zoning ordinance is "plainly wrong, and must be reversed" when it is "at odds with the plain language used in the ordinance as a whole." Board of Zoning Appeals v. 852 L.L.C., 257 Va. 485, 489, 514 S.E.2d 767, 770 (1999). "When an ordinance is plain and unambiguous, there is no room for interpretation or construction; the plain meaning and intent of the ordinance must be given it." Id. at 489, 514 S.E.2d at 769.

HZO § 5-1 lists uses permitted in the relevant zoning districts. Such permitted uses include

> [a]n accessory building or structure, or use, including a private pier, private garage, guest house, or servant quarters, provided no accessory building shall be constructed on a

> lot until the construction of the main building has been actually commenced, and no accessory building shall be used unless the main building is completed and in use.

HZO § 5-1(13).

In his determination letter, the zoning administrator interpreted HZO § 5-1(13) to mean that an accessory building or structure could not be "constructed prior to the commencement of the main building." However, that interpretation conflicts with the plain language of the ordinance.

Through HZO § 9-1(1) and HZO § 5-1(13), "[a]n accessory building or structure, or use" is permitted in an R-M zoning district. HZO § 5-1(13) includes a restriction that "no accessory building shall be constructed on a lot until the construction of the main building has been actually commenced, and no accessory building shall be used unless the main building is completed and in use."

At the time of the zoning administrator's determination, the zoning ordinance did not define the term "accessory building."* The term "building" was defined as "[a] structure having a roof supported by column or walls for the shelter, support or enclosure of persons, animals, or movable personal property." Former HZO § 2.1-25. The term "structure" was defined as "[a]nything constructed or erected, requiring location on or in the ground, or attached to something having location on the ground." Former HZO § 2.1-160.

When a legislative body leaves a term undefined, it must be given its ordinary meaning. American Tradition Inst. v. Rector & Visitors of the Univ. of Va., ___ Va. ___, ___, 756 S.E.2d 435, 441

---

* The zoning ordinance was amended to include a definition for the term "accessory building or structure" in December 2011.

(2014). The ordinary meaning of "accessory" when used as an adjective is "aiding or contributing in a secondary or subordinate way," "supplementary or secondary to something of greater or primary importance," and "additional." Webster's Third New International Dictionary 11 (1993). As used in HZO § 5-1(13) at the time of the zoning administrator's determination, in the absence of any legislative definition, "accessory" merely modified the term "building" as it was defined in former HZO § 2.1-25. That term encompassed a limited category of structures "having a roof supported by column or walls for the shelter, support or enclosure of persons, animals, or movable personal property." The posts Shri Ganesh proposes to install do not fall within the scope of this term. They therefore do not fall within the scope of the restriction.

Accordingly, the zoning administrator's determination is at odds with the plain language used in HZO § 5-1(13) and is plainly wrong. The circuit court therefore erred in affirming the decision of the BZA upholding it. The Court reverses the judgment of the circuit court and enters final judgment in favor of Shri Ganesh.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Patricia L Harrington

Clerk