

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Friday the 3rd day of January, 2014.*

J. Mark Carter, Zoning Administrator
for the County of York, et al.,

Appellants,

against Record No. 130144
Circuit Court No. 12-4495

Gregory M. Garrett, Sr.,

Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of York County.

Upon consideration of the record, briefs and argument of
counsel, the Court is of opinion that there is reversible error in
the order appealed from.

Gregory M. Garrett, Sr. owns waterfront property in York
County. Garrett has a single-family residence on his property and
conducts oystering activities there through his business, Greg
Garrett Oyster & Seafood Company, LLC. He refers to his business
as an oyster farming operation.

Garrett obtained all necessary permits from the Commonwealth
to cultivate oysters in the low-lying areas of the York River
pursuant to Virginia Code §§ 1-302, 28.2-1200 and -1201. The
parties agree that the Code of the County of York (CCY) zoning
ordinances apply to Garrett's property and pier, but not to his
cultivation of oysters in the low-lying areas of the York River,
which is governed by the Commonwealth. His property is in a Rural

Residential (RR) Zoning District, in which "crop/livestock farming" is a permitted use.¹ CCY § 24.1-306.

Garrett raises oysters using a cage method. He grows oysters in cages placed on the bottom of the York River. The cages protect the oysters from predators. As the oysters grow, they must be separated and placed in different cages so that they do not become overcrowded. The cages can be moved from one area to another if Garrett is not seeing the expected growth. Using the cage method is labor intensive because the oyster cages must be cleaned regularly for optimal growth.² Garrett stores oyster cages and other equipment, docks his boat and offloads oysters on his property.

The Zoning Administrator of York County, J. Mark Carter (Administrator), sent Garrett a notice of violation, which advised Garrett that the use of his property for his oystering operation was in violation of the CCY and required a Special Use Permit (SUP). Garrett appealed to the York County Board of Zoning and Subdivision Appeals (BZA), and the BZA upheld the determinations set out in the notice of violation. Garrett appealed the BZA decision to the Circuit Court of York County.

¹ In November 2011, the County amended the CCY zoning ordinances, but the parties agree that the preamendment Code is applicable in this appeal.

² Garrett's expert witness testified that an oyster farmer could clean the cages over the water on a skiff or barge, or on land. There is no evidence of which method Garrett uses.

At trial before the circuit court, Garrett argued that the BZA erred in determining that oystering activities on his property constituted an unauthorized land use in an RR zoning district, and that he was required to obtain an SUP. Garrett asserted that oysters are livestock and he was engaged in "crop/livestock farming," a permitted use in his zoning district.

The circuit court agreed with Garrett. The circuit court ruled that Garrett was engaged in "crop/livestock farming" and that Garrett could therefore conduct his oyster operation on his property without an SUP.

The County appeals. The County alleges that oysters are not livestock and that Garrett's oyster farm is not "crop/livestock farming." The County asserts that Garrett needs to obtain an SUP to continue his oystering activities on his property. Garrett argues that the circuit court did not err in holding that oysters are livestock and that his operations constitute "crop/livestock farming," a permitted use in an RR district.

CCY § 24.1-104 defines "livestock" as including "all domestic or domesticated . . . animals [that are typically characterized as farm animals,] or any other individual animal specifically raised for food or fiber, except companion animals." Garrett asserts that oysters are animals specifically raised for food and are therefore livestock.

The definition of "animal" in the York County zoning ordinances is pertinent. CCY § 24.1-104 defines "animal" as "[a]ny nonhuman vertebrate species except fish." It defines "[a]gricultural" as "[a]ll livestock and poultry." Id. Garrett

argues that the ordinance contains two separate definitions of "animal," specifically "animal" and "animal, agricultural" and that the word "animal" has a different, broader meaning in an agricultural context. We disagree.

"Interpretation of a local zoning ordinance, like the interpretation of a statute is a . . . question of law," which is reviewed de novo on appeal. Alexandria City Council v. Mirant Potomac River, LLC, 273 Va. 448, 455, 643 S.E.2d 203, 207 (2007). In "statutory interpretation[, appellate courts] are bound by the plain meaning of statutory language. Thus, if the language of a statute is unambiguous, courts may not interpret statutory language in a way that effectively holds that" the legislature did not mean what it actually stated. Alliance to Save the Mattaponi v. Commonwealth, 270 Va. 423, 439, 621 S.E.2d 78, 86-87 (2005) (citation omitted).

The CCY zoning ordinances clearly define "animal" as "[a]ny nonhuman vertebrate species except fish." CCY § 24.1-104. "Animal, agricultural" is defined as "livestock and poultry." Id. The examples of "livestock" in CCY § 24.1-104 are all vertebrate animals, which indicates that "animal, agricultural" is a subset of the more general definition of "animal" in CCY 24.1-104. See Newberry Station Homeowners Ass'n v. Board of Supervisors, 285 Va. 604, 620 n.9, 740 S.E.2d 548, 557 n.9 (2013) ("[T]he precise meaning intended by the legislature of a word susceptible to multiple meanings is ascertained by reference to [its] association with related words and phrases in the statute.") (citation and internal quotation marks omitted). Further, to define "livestock" as urged by Garrett, using the definition of "animal, agricultural"

to determine the meaning of "individual animal" mentioned in the definition of "livestock," would result in an absurdity, with livestock being defined as including "any other individual livestock." The Court will avoid such an interpretation. See County of Albemarle v. Camirand, 285 Va. 420, 424-25, 738 S.E.2d 904, 906 (2013).

Accordingly, "livestock" is limited to "animals," and the definition of "animal" is limited to "nonhuman vertebrate species." Oysters are not "animals" under the zoning ordinances because they are invertebrates. Garrett's oyster farming operation is therefore not livestock farming. As a result, Garrett has no right to continue his oyster operations in an RR district as crop/livestock farming, and the circuit court erred in holding otherwise.

There are no other applicable zoning provisions that Garrett claims permit him to conduct his oystering activities as a matter of right in an RR zoning district. Thus, Garrett's oyster operation can only continue on his property as an accessory use to his residence, or as a home occupation.

The County concedes that Garrett may continue his oystering activities on his property as an allowable home occupation³ pursuant to York County Zoning Ordinance § 24.1-283(d), which allows the "docking of workboats and offloading seafood in . . . RR districts," upon obtaining an SUP. The circuit court thus erred in ruling that Garrett did not need an SUP to conduct his oystering

³ A home occupation is a permitted "accessory use of a dwelling unit by the occupant of the dwelling for or with the intent of gainful employment involving the provision of goods and services." CCY § 24.1-104.

operation on his property. We need not address the remaining assignments of error.

Accordingly, we will reverse the judgment of the Circuit Court of York County and enter final judgment for the County. This order shall be certified to the said circuit court.

A Copy,

Teste:

Patsy L. Harrington

Clerk