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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2022-000973
Case No. 2021-CP-10-0555

Teresa Melhado and Dane Neller.....Appellants,

v.

City of Charleston, City of Charleston Board of Zoning Appeals, George Wallace,
Erika Wallace, and Erika R. Wallace, Trustee of the Erika R. Hayes Revocable
Trust u/a/d 8-4-2016.....Respondents.

AFFIDAVIT OF GEORGE M. WALLACE, JR.

PERSONALLY appeared before me, George M. Wallace, Jr., who, being first duly sworn,
states as follows:

1. I am over the age of 18 years and competent to make this Affidavit.
2. I have personal knowledge of the facts stated herein, unless any fact is stated to be based upon information and belief, in which case I believe such facts to be true based upon information that is known to me.
3. I live at 62 Church Street in Charleston County, South Carolina.
4. I am also an architect, licensed in the State of South Carolina for the last thirty-seven (37) years. I am a principal in Island Architects LLC, headquartered and based in Richmond, Virginia.

5. By and through Island Architects LLC, I designed the rear addition and modifications to 62 Church Street and assisted with the approval and permitting process as further detailed herein.

6. My wife, Erika R. Wallace f/k/a Erika R. Hayes, acquired 62 Church Street in 2012. The house was originally constructed in 1817.

7. In 2016, we made the property our full-time primary residence.

8. My wife and I immediately realized we needed to add certain features to 62 Church Street if it were to function as a modern-day residence. Among other things, the 200-year-old home lacks a laundry room, closets, and storage space.

9. To this end, in 2016 – more than six (6) years ago – I started designing a small two-story addition to the rear portion of our home. The addition includes a first-floor garden room and above it, a hallway, closet, laundry room, and walk-in closet. I also incorporated in the plans the addition of a dormer window on the front façade of the home to allow for more natural sunlight. A true and correct copy of the final plans are attached hereto as **Exhibit A** and incorporated by reference.

10. The designing process also involved collaboration and input from the City of Charleston, the Historic Charleston Foundation,¹ and the Preservation Society of Charleston. I started collaborating and seeking the input from these groups in 2018, more than four (4) years ago, and years prior to finally submitting the application to the BZA. The final design documents reflect the input and feedback received from these groups and we had each of their support before submitting our application to the BZA.

¹ The pre-submission comments and observations of the Historic Charleston Foundation were particularly important because it holds a façade and open space conservation easement on the house and garden. We could not proceed without its written approval.

11. On July 19, 2021, I applied to the City of Charleston Board of Zoning Appeals (the “BZA”) for a special exception for a side lot line setback and variance from the maximum lot coverage under the City’s Zoning Ordinances, to accommodate the small addition. The BZA set the application on its August 3, 2021 meeting agenda.

12. Around this time, my neighbors, Kurt and Caroline Palmer, sold 60 Church Street to Appellant Teresa Smith Melhado. Upon information and belief, the transaction closed on July 1, 2021.

13. Upon information and belief, neither of the Appellants occupy 60 Church Street on a full-time basis, or as their permanent residence, but instead spend time between Ms. Melhado’s² properties in the Hamptons and Manhattan. I have observed the Appellants at 60 Church Street approximately three (3) months out of the last twelve (12) months. The vehicle I see them using when they are here is registered in the State of New York.

14. My wife and I reached out to Ms. Melhado on July 28, 2021, to welcome her to the neighborhood and inform her of our plans for the rear addition. Her response was: “All of your plans sound like enhancements to me” and “Looks like it will be very pretty.” A true and correct copy of this email exchange is attached hereto as **Exhibit B** and incorporated by reference.

15. After this initial email exchange, Ms. Melhado changed her mind and demanded that I remove the application from the agenda for the upcoming BZA meeting.

16. My wife and I accommodated her request and agreed to defer consideration of the application by the BZA for a month. Within thirty (30) minutes of meeting Ms. Melhado, I learned she had hired lawyers to oppose our long-planned project.

² I do not know what Appellant Dane Neller’s relation to 60 Church Street is (if any) or to its owner, Appellant Teresa Melhado. I have observed him at the property on several occasions in the last year.

17. We received letters of support for our request for the variance and special exception not only from our neighbors but also from the Historic Charleston Foundation, copies of these letters are attached as Exhibit C.

18. The BZA considered our application at its September 7, 2021 meeting. The City Staff through Mr. Batchelder recommended approval of our application. The only objection to our application was from Appellants. They claimed they were affected by the rear addition because it might block a small portion of the view from the rear of their house, somehow affect the breeze and light, and might cast a shadow on a portion of their pool house. They also complained that there could be noise from the HVAC compressors and the generator (only to be used during power outages).

19. The BZA unanimously approved our application over the Appellants' objection in a 7-0 decision. The BZA addressed Appellants' concerns regarding the location of the new compressors and generator by conditioning the approval on our using our best efforts to baffle/reduce noise emanating from the generator and HVAC units. A copy of the unanimous decision of the BZA is attached as Exhibit D.

20. The Appellants filed a motion for reconsideration of this decision before the BZA. The BZA heard the motion at its meeting on October 19, 2021, and unanimously denied the motion. A copy of the BZA's decision is attached as Exhibit E. The Appellants filed their appeal of the BZA decisions with the circuit court on November 18, 2021.

21. After the BZA unanimously denied their motion to reconsider, I applied for and obtained the following approvals and permits:

- a. **BAR Approval:** On October 20, 2021, I applied to the City of Charleston Board of Architectural Review (the "BAR") for final review of the planned alterations and additions to 62 Church Street. The BAR approved the project on January 4, 2022. A true and correct copy of BAR Approval is attached

hereto as **Exhibit F** and incorporated by reference. The approval placard dated January 4, 2022, was posted in our living room window (streetside) on January 5, 2022, and remained in the window until January 20, 2022.

- b. **Building Permits:** We applied on December 9, 2021 for a building permit. On January 31, 2022, the City of Charleston issued a permit for the addition of a rear garden room with master closet above to attach to the existing shed on the south side, the addition of a dormer to the West façade (street side), and alteration of existing screened porch by removing the screens, and the addition of a window to the West wall, and add louvers to the West end of the piazza , permit #SF2021-14185 (the “Building Permit”). A true and correct copy of Building Permit is attached hereto as **Exhibit G** and incorporated by reference. The permit was pasted in our Living Room window on the west wall (streetside) on February 1, 2022, and is still there.
- c. The City of Charleston further issued an electrical permit for the wiring of the addition and service upgrade. The electrical permit, City of Charleston permit # ELR2022-14453, was issued on February 24, 2022.

22. My wife and I contracted with qualified and licensed residential contractors, and obtained all necessary approvals and permits before any work began on our property. The contractors are fully mobilized and have been on the job continuously since the issuance of the building permit.

23. The contractors working on our addition have made substantial progress since the Building Permit was issued on January 31, 2022 and are approximately half-way through the project. The two-story rear addition is framed, the dormer on the front, west side of the property is also framed, and electrical wiring and plumbing work is in progress. Attached hereto as **Exhibit H** are photographs that accurately depict the current status of the construction. These photographs are incorporated herein by reference. As the photographs reflect, not only is our yard a work site, but several areas of the interior of our residence are storing boxes of materials and fixtures not yet ready to be installed and the belongings stored in the areas of the existing residence that are being worked on.

24. Applications to the BAR and Building Department are accessible to the public

online and are regularly updated online. To my knowledge, Appellants did not object to our plans when they were considered by the BAR nor appeal the BAR's approval of our plans. The Appellants did not object to nor interfere with our Building Permit application. As set out above, the BAR approval placard and Building Permit were openly and obviously posted on our property where they could be clearly seen from Church Street.

25. The circuit court affirmed the decisions of the BZA and denied the Appellants' request to reverse the BZA on April 20, 2022. I attended that hearing as did my wife. The hearing was conducted by WebEx® and Judge Dennis issued his ruling denying and dismissing the appeal from the bench.

26. On July 14, 2022, Appellants filed Notice of Appeal in the Court of Appeals and, with it, their request for a writ of supersedeas to stay the construction pending the appeal. Their filing came the day before the deadline to file an appeal.

27. We are now at an advanced stage in the construction where the building envelope has been penetrated on both sides of the property. The penetration is to a significant degree. There is approximately a 15' by 15' breach of the roof on the East side of the property to allow for the rear addition to connect to the existing structure. The front of the second story of the home is also currently exposed for the addition of the dormer windows. Photographs depicting the open building envelope in these areas are attached hereto as **Exhibit I** and incorporated by reference.

28. In my personal and professional opinion as a licensed architect, this construction is at a stage where there is no way to suspend work for an indefinite period of time without losing the value of the work that has been completed and cause significant damage. Doing so would expose various components of the building (both new and existing) to the elements for a period of time beyond their rating for such. In general, penetration of a building's envelope creates a myriad

of problems. I have serious concerns about leaving certain elements open to extended exposure, partially finished, and electrical and plumbing open and exposed, especially during hurricane season. There would be enormous damage to our house if a tropical storm or hurricane hit. If we were forced to leave this structure partially complete and later allowed to complete construction efforts, I do not know how the inspections that have been completed to date would be affected, whether the property would pass future inspection, and whether this addition, which we are investing a significant amount of money into, would be insurable at the end of this.

29. Among the harms that I reasonably anticipate will flow from not being able to complete the work and leaving the building exposed for three years if a stay is imposed, are: damage to the existing structure in the form of mold, mildew, wood rot and rodent infestation; additional and unanticipated project costs incurred in the removing, transporting, and storing of salvageable components of the new addition; the costs incurred in taking measures intended to protect the existing structure and the exposed elements that are not removable or storable (if any such measures are available); damage to the building materials stored on the property; breach of contract claims asserted by the general contractor and subcontractors working on the project; the costs that will be incurred in resuming the project, including material and labor cost escalations; breach of the terms and conditions of the facade conservation easement on the property held by the Historic Charleston Foundation; extensive project delays due to the unavailability of contractors and subcontractors when the project resumes; and the dislocation of my wife and me for the entire time the house is unlivable because of the half-completed construction.

30. My wife and I are also concerned about what this will mean to our other neighbors and the historic district. As is, the view is of Tyvek house wrap and unfinished walls covered with black building felt and a roof structure. This view is not limited to the properties neighboring 62

Church on the North and South, although the view is especially poor from 64 Church Street, the neighboring property to the North of 62 Church (see the photograph depicting this view which is attached hereto as Exhibit J and incorporated by reference). Stoll's Alley, a historic pedestrian walkway, runs behind, the property, or on the East side. Attached hereto as Exhibit K and incorporated by reference, is the view of the addition, in its current form, from the historic Stoll's Alley, toured regularly by walking groups.

31. My wife and I have already invested approximately \$350,000.00 in this project. This figure does not include the time I have invested in designing and planning this project, nor does it include the legal fees and costs my wife and I have incurred to defend the BZA's decisions, which are considerable. It does include the expense of purchasing new, commercial-grade air compressors, at a cost of \$17,580.00, and upgraded dampers and controls that greatly reduce the sound of the equipment.

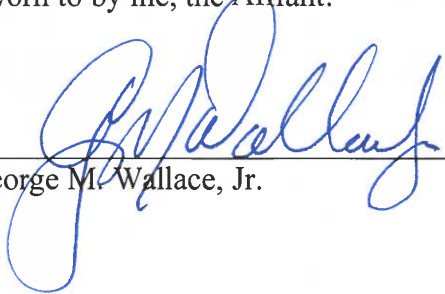
32. We took out substantial financing to fund the project. I anticipate that we may need to draw from our retirement savings to fund this new round of appeals.

33. If the Appellants' petition is granted, we will be displaced from our house and lose our investment in the renovations. The house will be damaged by the elements, and the property will be considerably devalued.

34. I swear and reaffirm that affording the Appellants a stay while this appeal ensues will cause great and irreparable harm to our historic house at 62 Church Street, my wife, and me, and negatively affect the neighboring homeowners, the contractors who are working on this project, and the public interest.

[SIGNATURE PAGE FOLLOWS]

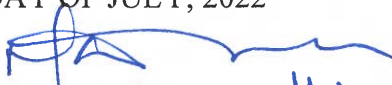
Sworn to by me, the Affiant:



George M. Wallace, Jr.

Charleston, South Carolina

SWORN TO BEFORE ME THIS 22nd
DAY OF JULY, 2022



M. Eupenia Minniti

Notary Public for South Carolina

My Commission Expires: 8/27/2023