

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM GREENVILLE COUNTY  
HONORABLE KENNETH M. POWELL

80-CP-23-3121

Herman Leo Byars,  
Appellant,

vs.

Greenville County Board of  
Zoning Appeals and Steve W.  
Day, Zoning Administrator,

Respondents.


FILED CLERK OF COURT  
GREENVILLE, CO. S.C.  
CAROLINE M. MATTOX  
DEC 17 1 34 PM '81

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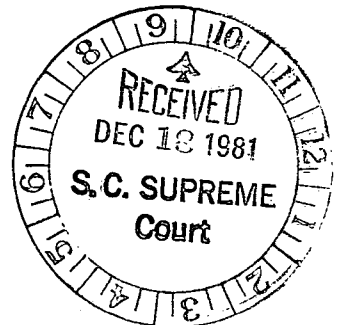
Filed Dec 17, 1981  
W/struck date

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the undersigned does hereby  
give notice of intent to appeal from the Order of the Honorable  
Kenneth M. Powell, dated December 3, 1981.

  
James W. Fayssoux  
Attorney for Appellant  
18 Lavinia Avenue  
Greenville, South Carolina 29601

Greenville, South Carolina  
December 16, 1981



THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
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HONORABLE KENNETH POWELL, JUDGE  
#80-CP-23-3121

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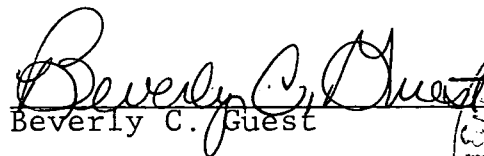
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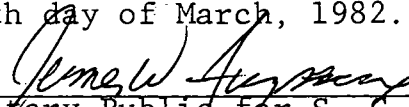
Respondents.

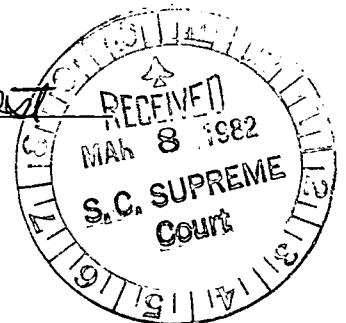
AFFIDAVIT OF SERVICE

PERSONALLY appeared before me the undersigned,  
Beverly C. Guest, who being first duly sworn, deposes and  
says that she did on the 5th day of March, 1982, serve upon  
counsel for Respondents, Clifford F. Gaddy, Jr., one (1)  
copy of the Proposed Case with Exceptions of Appellant,  
by delivering same to his office at 408 North Church Street,  
Greenville, South Carolina.

  
Beverly C. Guest

SWORN to before me this  
5th day of March, 1982.

 (SEAL)  
Notary Public for S. C.  
My Commission Expires: 5-29-83



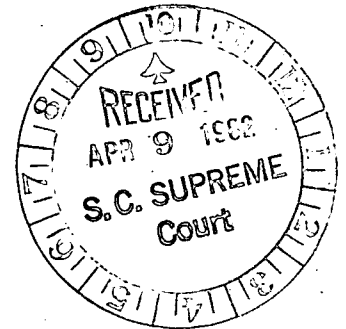
THE STATE OF SOUTH CAROLINA  
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#80-CP-23-3121

Herman Leo Byars,  
Appellant,

vs.

Greenville County Board of  
Zoning Appeals and Steve W.  
Day, Zoning Administrator,

Respondents.



PROPOSED CASE WITH EXCEPTIONS

JAMES W. FAYSSOUX  
Attorney at Law  
18 Lavinia Avenue  
Greenville, South Carolina 29601

ATTORNEY FOR APPELLANT

Clifford F. Gaddy, Jr.  
Attorney at Law  
408 North Church Street  
Greenville, South Carolina 29601

ATTORNEY FOR RESPONDENTS

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STATEMENT

This is an appeal from the Order of the Honorable Kenneth Powell, dated December 3, 1981, which denies Appellant's request for relief from a Stop Order issued by the Zoning Administrator of Greenville County directing the Appellant to discontinue operating a garage. The Stop Order in question was issued on July 28, 1980 pursuant to the provisions of Section 8:1.2 of the Greenville County Zoning Ordinance.

In the early 1970's the subject property was zoned R-20 Residential. In 1970 the Appellant and his son started operating a business known as Byars Ditching. During the course of operation heavy earth-moving equipment was kept on the property and work was performed on this equipment from time to time. Activity continued at the property until 1980 when an automobile repair business known as "George's Auto Services" began operation in the same location and in the same building.

The Zoning Board of Appeals subsequently held, on September 3, 1980 that the operation of the garage was in violation of the Zoning Ordinance. An appeal to the Court of Common Pleas was filed by Appellant and the Order issued by the Court upholding the decision of the Zoning Board is the subject of this appeal.

- 1 Here print letter of S. W. Day dated July 28, 1980
- 2
- 3 Here print letter of S. W. Day dated September 26, 1980
- 4
- 5 Here print Findings of Fact and Decision of Board of Zoning
- 6 Appeals dated October 5, 1981
- 7
- 8 Here print Petition dated October 30, 1980
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- 10 Here print Transcript of hearing held on November 9, 1981
- 11
- 12 Here print Order of Judge Kenneth Powell dated December 3, 1981
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- 14 Here print Section 6:1.1 through Section 6:2.5 of Zoning
- 15 Ordinance of Greenville County
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EXCEPTIONS

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM GREENVILLE COUNTY  
HONORABLE KENNETH POWELL, JUDGE  
#80-CP-23-3121

Herman Leo Byars,  
Appellant,

vs.

Greenville County Board of  
Zoning Appeals and Steve W.  
Day, Zoning Administrator,  
Respondents.

EXCEPTIONS

1. The Trial Judge committed error in refusing to remand the matter to the Board of Zoning Appeals. The error being that the issue of whether or not the structure was completed within ninety (90) days from the start of construction was a critical issue for determination of whether or not the basis for a non-conforming use existed and said fact was never determined by the Zoning Board of Appeals.

2. The Trial Judge committed error in refusing to remand the matter to the Board of Zoning Appeals. The error being that the findings of fact as made by the Board of Zoning Appeals justifies the continuance of the use made of the property in

1 that the Board of Appeals found that a non-conforming use  
2 existed.

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THE STATE OF SOUTH CAROLINA  
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#80-CP-23-3121

Herman Leo Byars,

Appellant,

vs.

Greenville County Board of  
Zoning Appeals and Steve W.  
Day, Zoning Administrator,

Respondents.

AGREEMENT OF COUNSEL AND CERTIFICATE

Counsel agree that the foregoing record, when printed, is a true and correct copy of the agreed case and exceptions in said cause. Furthermore, the undersigned counsel hereby certify that all irrelevant matter has been deleted, and that the requirements of Rule 4 of the Rules of the Supreme Court have been satisfied.

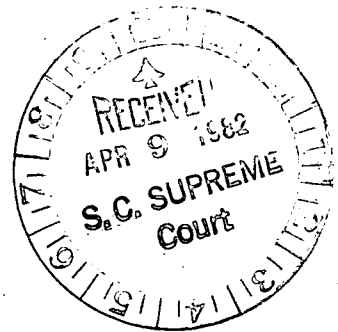
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James W. Fayssoux  
Attorney for Appellant  
18 Lavinia Avenue  
Greenville, S. C. 29601

---

Clifford F. Gaddy, Jr.  
Attorney for Respondents  
408 North Church Street  
Greenville, S. C. 29601

April 5, 1982



THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM GREENVILLE COUNTY  
HONORABLE KENNETH POWELL, JUDGE  
#80-CP-23-3121

Herman Leo Byars,  
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vs.

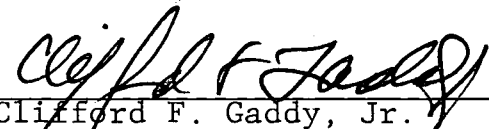
Greenville County Board of  
Zoning Appeals and Steve W.  
Day, Zoning Administrator,

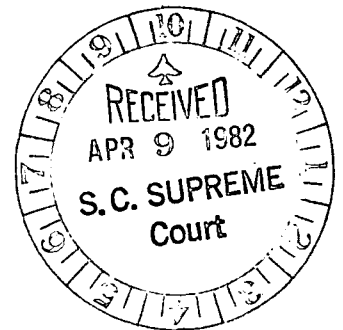
Respondents.

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James W. Fayssoux  
Attorney for Appellant  
18 Lavinia Avenue  
Greenville, S. C. 29601

  
Clifford F. Gaddy, Jr.  
Attorney for Respondents  
408 North Church Street  
Greenville, S. C. 29601



April 5, 1982

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM GREENVILLE COUNTY  
HONORABLE KENNETH POWELL, JUDGE  
#80-CP-23-3121

Herman Leo Byars,

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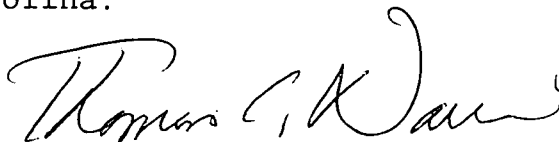
vs.

Greenville County Board of  
Zoning Appeals and Steve W.  
Day, Zoning Administrator,

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AFFIDAVIT OF PERSONAL SERVICE

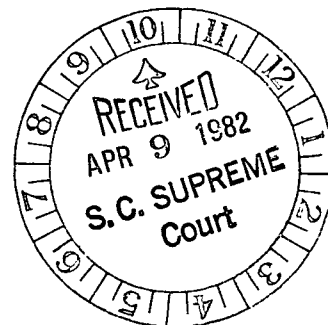
PERSONALLY appeared before me THOMAS C. DAVIS, who being first duly sworn, deposes and says that on the 5th day of April, 1982 he did serve upon Clifford F. Gaddy, Jr., Attorney for Respondents, one copy of the Proposed Case and Exceptions by leaving one (1) copy of the same at his office at 408 North Church Street, Greenville, South Carolina.



Thomas C. Davis

SWORN to before me this  
5th day of April, 1982.

 (SEAL)  
Notary Public for South Carolina  
My Commission Expires: 11-19-90





# The Supreme Court of South Carolina

FRANCES H. SMITH  
CLERK

P. O. BOX 11330  
COLUMBIA, S. C. 29211

Herman Leo Byars,

Appellant,

v.

Greenville County Board of Zoning Appeals  
and Steve W. Day, Zoning Administrator,

Respondents.

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## ORDER

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For good cause the time for serving and filing brief of appellant in the above entitled case is hereby extended to June 1, 1982.

J. WOODROW LEWIS, CHIEF JUSTICE

By Frances H. Smith  
Clerk

Columbia, South Carolina

May 27, 1982

Copies sent to: James W. Fayssoux, Esquire

Clifford F. Gaddy, Jr., Esquire

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Herman Leo Byars, . . . . .Appellant,  
v.  
Greenville County Board of Zoning  
Appeals and Steve W. Day, Zoning  
Administrator,. . . . .Respondents.

---

Appeal from Greenville County  
Kenneth Powell, Special Circuit Judge

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Memorandum Opinion No. 84-MO-023  
Submitted June 1, 1984      Filed June 25, 1984

AFFIRMED

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James W. Fayssoux, of Greenville, for appellant.

Clifford F. Gaddy, Jr., of Greenville, for respondents.

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GARDNER, J.: In this action, respondent Greenville County Board of Zoning (Board) issued a "stop order" to Herman Leo Byars forbidding the use of the subject property for an automobile service and repair business; the trial court sustained the decision of the Board. We affirm.

In 1970, Byars and his son operated a business known as "Byars Ditching." In the same year, the property on which this business was operated was zoned "residential." Byars continued to operate the "Byars Ditching" business as a nonconforming use for approximately ten years. In 1980, "George's Auto Service," an automobile repair business, began operating on the premises. The Board's "stop order" was premised upon its finding that the automobile repair business was an expansion of a nonconforming use, i.e., the ditching business.

In the petition to the Court of Common Pleas, Byars alleged that the Board failed to make necessary findings of fact that his former business was nonconforming and he also argued that the vehicle repair service was, in fact, no different from the ditching business; he argued that when he was in the ditching business he repaired his own vehicles on the premises.

The trial judge found that the two businesses were different. The auto mechanic business involved such activities as the racing of automobile engines and the entering and the

leaving of vehicles to and from the premises throughout the day and night. The trial judge concluded that the automobile repair business was a violation of the Greenville County Zoning Ordinance. Relevant portions of the ordinance are set out below.

6:2.1 - Extension of Nonconforming Uses; Nonconforming Structures (sic) Nonconforming uses of land or structures existing at the time of adoption of this ordinance shall not hereafter be enlarged or extended in any way, with the exception of nonconforming single-family residential structures. Nonconforming single-family residential structures may be enlarged or extended in any zoning district provided that the new additions conform to the setback requirements provided in the zoning district in which such structures or uses are located.

6:2.2 - Change of Nonconforming Use  
Any nonconforming use may be changed to any conforming use, or with the approval of the Board of Zoning Appeals, to any use more in character with the uses permitted in the district. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accordance with the provisions of this ordinance.

Byars raises two issues on appeal: (1) Did the trial judge err by refusing to remand to the Board for further fact finding to determine if the business, in fact, constituted a nonconforming use; (2) Did the trial judge err by refusing to remand to the Board for findings of fact as to justification for the continuance of the present use of the property?

Byars' contention that the case should have been remanded to the Board for it to determine if the use of the property as "Byars Ditching" constituted a nonconforming use is untenable. Since the trial judge found that the ditching business was a nonconforming use, and in this we hold that he was correct, a remand to the Board for a determination of this issue would serve no purpose. The subject property is zoned "residential." Byars' technical argument that the Board made no finding that the building on the property was completed ninety days before the effective date of the zoning ordinance is without merit; regardless of when the building was completed, the use of the property as "Byars Ditching" was palpably nonconforming.

We also reject Byars' argument that the trial court erred by refusing to remand to the Board because there was no evidence to support the Board's finding that the operation of

the automobile repair service was an expansion of a nonconforming use. The evidence of record supports the finding of the trial court that the conversion of the use of the premises from a ditching business to an automobile repair service constitutes an expansion of a nonconforming use.

Additionally, the transcript of the testimony before the Board is not of record. Byars, as the appealing party, has the burden of furnishing a sufficient record from which this court can make an intelligent review; otherwise, there is nothing from which this court can conclude that the lower court erred. Hamilton v. Greyhound Lines East, S.C. Op. No. 22094, filed May 7, 1984.

We hold that the evidence of record supports the trial judge's finding that the garage was an expansion of a nonconforming use. Accordingly, the appealed order is

AFFIRMED.

SANDERS, C.J. and GOOLSBY, J. concur.

Judgement **AFFIRMED**

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**The State of South Carolina**

**IN THE COURT OF APPEALS**

May Term, 1984

Greenville County

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Herman Leo Byars, . . . . Appellant,

v.

Greenville County Board of Zoning Appeals and Steve W. Day, Zoning Administrator, . . . . Respondents.

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Opinion By  
*[Signature]* J.

We Concur  
*[Signature]* J.

We Dissent:

J.

A.J.

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South Carolina Court of Appeals  
Clerk's Office, Columbia, S. C.

FILED June 25, 1984  
*Reba D. Mims*

Clerk

84-mo-033

July 6, 1984

The Honorable Caroline W. Mattos  
Clerk of Court  
309 East North Street  
County Courthouse  
Greenville, South Carolina 29601

Dear Ms. Mattos:

Enclosed is remittitur in the case of Herman Leo Byars v.  
Greenville County Board of Zoning Appeals and Steve W. Day, Zoning  
Administrator.

Very truly yours,

Reba B. Mims  
Clerk

RDM/irc

Enclosure