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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable H. Steven DeBerry, IV, Circuit Court Judge 2771

Appellate Case No. 2024-000868
Case No. 2023-CP-33-00500

Thomas & Nicole Betancourt, Jimmy & Amie Boatwright, and Norman & Kristina Whetzel.....
.....Appellant(s),

v.

City of Mullins Zoning Board and Dr. Todd Blevins of Blevins Dentistry.....Respondent(s)

INITIAL BRIEF OF APPELLANT

January 3, 2025

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- 4. The City of Mullins Zoning Board failed to consider specific factors, as required, per the state statutes and local ordinance.
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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT FAIL TO CONSIDER ALL RELEVANT FACTS PROVIDED AND FAIL TO APPLY THE LAW CORRECTLY IN REACHING AN INFORMED DECISION?
2. DID THE CIRCUIT COURT IGNORE CRITICAL EVIDENCE FROM THE CASE, THEREBY DENYING THE PLAINTIFFS A FAIR HEARING?
3. DID THE CIRCUIT COURT DISMISS CRUCIAL EVIDENCE WITHOUT ANY LOGICAL EXPLANATION AS TO WHY?
4. DID THE CIRCUIT COURT ERR IN FINDING THAT THE CITY OF MULLINS ZONING BOARD DID NOT VIOLATE THE STATE STATUTES AND LOCAL ORDINANCES, WHILE DISREGARDING THE RULES OF EVIDENCE AND PROCEDURE FOR A FAIR HEARING?
5. DID THE CIRCUIT COURT ERR IN RULING AGAINST THE PLAINTIFFS?

STATEMENT OF THE CASE

This appeal arises from a complaint filed, on September 12, 2023, in Marion County, South Carolina, by Thomas & Nicole Betancourt, Jimmy & Amie Boatwright and Norman & Kristina Whetzel against the City of Mullins Zoning Board and Dr. Todd Blevins of Blevins Dentistry. The application was assigned Docket No. 2023-CP-33-00500. The Complaint was an appeal against the City of Mullins Zoning Board, for the approval of a variance request. On August 29, 2023, the City of Mullins Zoning Board held a special public meeting to approve the variance requested by Todd Blevins, for a non-contiguous parking lot, to be built across the street from his dental practice. Several residents objected citing the Municipal Code of Ordinances/local ordinances (Municode) were violated, and that the City of Mullins did not perform their due diligence in fully and completely researching the variance request. Nor did the City of Mullins have the required Committees in place to take on such tasks. To date, Mullins is still without the required Committees in place.

The Complaint went into thorough detail, with evidence, fully detailing how the City of Mullins Zoning Board failed to follow state statutes and local ordinances and ignored violations.

On October 5, 2023, the attorney for the City of Mullins Zoning Board responded to the Complaint, with “does not have sufficient information or knowledge”, although all facts provided in the Complaint were pulled directly from the City of Mullins Municipal Code of Ordinances. Every City Committee/Board member must have a copy of the entire Municode and be well acquainted with their Municode section(s).

On October 11, 2023, the attorney for Todd Blevins responded to the Complaint, acknowledging and admitting to his approximate 14' x 16' addition built around March 2019 and admitting to his larger, approximate 30' x 31' addition built sometime in early to mid-2020. These two (2) additions adding roughly 1,154 sq ft to his business footprint.

On November 2, 2023, Plaintiffs responded to both the City of Mullins and Todd Blevins, again reiterating to the City of Mullins Zoning Board, with further evidence, their failure to follow state statutes and local ordinances.

On April 22, 2024, a Court Hearing was held via Zoom. All parties were present and discussed the case in front of the Honorable H. Steven Judge DeBerry, IV. The Plaintiffs explained, in depth, the undisputable facts regarding variance requests, procedures and regulations, per state statutes and the Municode. None of these facts were argued by any of the Defendants.

On April 22, 2024, later in the day, the attorney for the City of Mullins Zoning Board, filed with Marion County, a copy of the August 29, 2023, Public Hearing Meeting Minutes along with a never seen before additional "page" written by Spencer Jordan, Chairman of the Zoning Board. This new page is not available online, as all meeting minutes are required, was written in April 2024 (8 months after the public hearing) and certified to be true by Felicia Sawyer-Norton, current City Clerk. It will later be confirmed, through FOIA requests and audio recording, to be completely fabricated.

On April 23, 2024, Plaintiffs responded to the April 22, 2024 filing from the City of Mullins requesting a copy of the audio recording from the August 29th public hearing.

On April 24, 2024, Plaintiffs filed an additional response further emphasizing, with Satellite photos of Todd Blevins actual business parcel, his original footprint, his footprint after his expansions, and his ability to generate more parking on his primary business location.

On May 9, 2024, the parties received Judge DeBerry's Decision respectfully denying the relief sought by the Plaintiffs. Judge DeBerry wrote in his Statement of Judgment that a certified copy of the public hearing findings and discussions were filed and made a part of the record on March 4, 2024. He also stated that the Zoning Board substantially complied with the requirements found in Section 9.3-2 of the Municode. Plaintiffs noted at this point that the certified copy of the public hearing meeting minutes were not filed and made a part of the record until April 22, 2024 when Attorney JP Williams, for the City of Mullins, filed them after the morning court hearing. Plaintiffs also noted that citing the City of Mullins substantially complied with Section 9.3-2, as a generic response, while disregarding all other statutes and local ordinances violated, indicates no consideration was taken into any other evidence.

Defendants were served with the Notice of Appeal on May 22, 2024, appealing the May 9, 2024 Order of the Honorable H. Steven DeBerry, IV.

Just two (2) days later, May 24, 2024, Plaintiffs were compelled to file a Motion for an Emergency Stay Pending Appeal per SC Rule 241(a), wherein the service of a

notice of appeal in a civil matter acts to automatically stay matters decided in the order and to automatically stay the relief ordered in the appealed order, due to the Defendant, Todd Blevins, moving forward with the construction of the parking lot.

This appeal follows with the May 22, 2024 filing of the Notice of Appeal, as well as being a part of the Marion County Motion for an Emergency Stay Pending Appeal May 24, 2024 filing.

STANDARD OF REVIEW

Multiple standards apply in reviewing this matter. As set forth in S.C. Code Ann. § 1-23-380(5), “The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact.” On Appeal, the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

“In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law.” S.C. Code Ann. § 6-29-840(A).

A board of adjustment is vested with a wide discretion in determining whether a variance should be granted in a particular case on the ground of unnecessary hardship. *Talbot v. Myrtle Beach Board of Adjustment*, supra, 222 S.C. 165, 72 S.E. (2d) 66. An owner is not entitled to relief from a self-created or self-inflicted hardship. A claim of unnecessary hardship cannot be based on conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that the nonconforming use would work a hardship upon him. A self-created or self-inflicted hardship intentionally created by an owner of premises for the purpose of laying a basis for an application for a variance cannot be considered for

such purpose. Rush v. City of Greenville, 246 S.C. 268, 143 S.E.2d 527 (1965); Georgetown County Building Official v. Lewis, 290 S.C. 513, 351 S.E.2d 584 (Ct. App. 1986); Restaurant Row Associates v. Horry County, supra. Where one purchases realty with the intention to apply for variance, he cannot contend that restrictions caused him such peculiar hardship that entitles him to special privileges which he seeks. Gleason v. Keswick Imp. Association, 197 Md. 46, 78 A. (2d) 164. The decision of the zoning board will not be upheld where it is based on errors of law, or fraud, or where there is no legal evidence to support it, or where the board acts arbitrarily or unreasonably, or in a discriminatory manner or where, in general, the board has abused its discretion. Hodge v. Pollock, 223 S.C. 342, 75 S.E. (2d) 752 (1953). In exercising its discretion, the board of adjustment is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E. (2d) 128, 168 A.L. R. 1. There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application, and where the Planning and Zoning Commission and the city council of a municipality have acted after considering all of the facts, the Court should not disturb the finding unless such action is arbitrary, unreasonable, or in obvious abuse of its discretion, or unless it has acted illegally and in excess of its lawfully delegated authority. The burden of proving the invalidity of a zoning ordinance is on the party attacking it to establish that the acts of the city council were arbitrary, unreasonable and unjust. Bob Jones University v. City of Greenville, 243 S.C. 351, 133 S.E. (2d) 843. In appeals from a Board decision, “the circuit court and

the appellate court ‘must determine only whether the decision of the board is correct as a matter of law’” Bevivino v Town of Mount Pleasant Board of Zoning Appeals, 402 S.C. 57, 62, 737 S.E. (2d) 863, 866 (Ct. App 2013). The decision of a municipal zoning board “will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” “This Court will not disturb the findings of the Board of Adjustment unless such findings or decision resulted from action of the Board, which is arbitrary, an abuse of discretion, illegal, or in excess of lawfully delegated authority.” Bannum, Inc. v. City of Columbia, 335 S.C. 202 (S.C. 1999).

ARGUMENT

1. **THE CITY OF MULLINS ZONING ADMINISTRATOR COLLUDING WITH TODD BLEVINS IS DIRECT ABUSE OF POWER AND VIOLATES STATE STATUTES AND LOCAL ORDINANCES.**
2. **THE CITY OF MULLINS ZONING BOARD NEGLECTED THEIR RESPONSIBILITIES AND DUTIES FOR WHICH THEY WERE APPOINTED.**
3. **THE CITY OF MULLINS ZONING BOARD ACCEPTED AND ACTED ON A LIMITED AND INCOMPLETE APPLICATION, IN VIOLATION OF STATE STATUTE AND LOCAL ORDINANCE.**
4. **THE CITY OF MULLINS ZONING BOARD FAILED TO CONSIDER SPECIFIC FACTORS, AS REQUIRED, PER THE STATE STATUTES AND LOCAL ORDINANCE.**
5. **THE CITY OF MULLINS ZONING ADMINISTRATOR AND ZONING BOARD FAILING TO APPLY THE LAW CORRECTLY, IN REACHING A DECISION, IS AN ABUSE OF DISCRETION AND POWER.**
6. **BY EXPEDITING THE PROCESS TO FAVOR THE BUSINESS OWNER, THE CITY OF MULLINS UNLAWFULLY MADE DECISIONS REGARDING THE VARIANCE REQUEST.**

By the time the City of Mullins Zoning Board (BZA) held the August 29, 2023 public hearing for Todd Blevins proposed “employee” parking lot, they already violated state statutes and local ordinances.

Prior to any public hearing for a variance request, the individual requesting the variance is required to complete a Variance request permit application. This application, per *S.C. Code Ann § 6-29-800* and *The Municipal Code of Ordinance, Appendix A-Zoning, Section 10.5-Application procedures for change or relief*, must be completely filled out, with all required attachments, and approved by the Zoning Administrator, for completeness, before it is placed on the Zoning Board of Appeals calendar for public hearing. The application must include, but not limited to, the signed completed application, explanation of hardship, supporting documentation for the hardship, application fee, plot plans, surveys, blueprints, landscaping, lighting, drainage, etc.

In addition, the application must provide the required documentation for the specific permit the applicant is applying for. In the Defendants case, he was seeking a permit for “off street parking”. Per the *Municipal Code of Ordinances, Appendix A-Zoning, Article 6-Supplemental Off-Street Parking and Loading Regulations, Section 6.1-Off Street Parking*, in *Section 6.1-3 Design Standards*:

- (1) *Parking Dimensions.* Parking stalls shall be not less than nine (9) feet by nineteen (19) feet, except that a maximum of ten percent (10%) of the total number of stalls may be 8.5 feet by eighteen (18) feet. However, the dimensions of all parallel parking stalls shall be not less than nine (9) feet by twenty-four (24) feet.
- (2) *Construction, Paving.* Where 10 or more off street parking stalls are required by this ordinance, such stalls and all ingress and egress drives shall be surfaced with an all-weather, impervious surface material, approved by the Zoning Administrator.
- (3) *Drainage.* Parking lots shall be designed so as not to drain into, across public sidewalks, or on to adjacent property, except into a natural watercourse or a drainage easement.
- (4) *Separation From Walkways and Streets.* Off-street parking spaces shall be separated from walkways, sidewalks, streets, and required yards and buffer areas by a wall, fence, curbing, or other protective device approved by the Zoning Administrator (See Section 4.2-6).
- (5) *Entrances and Exits.* Landscaping, curbing or other approved barriers shall be provided along boundaries to control entrance and exit of vehicles or pedestrians. Except for single-family homes and duplexes, off-street parking areas shall be designed so that all movement on to a public street is in a forward motion. Entrance and exit driveways to public streets in the vicinity of street intersections must be located at least forty (40) feet, measured along the curblines, from the intersection of the nearest curblines.
- (6) *Marking.* Parking lots shall be marked by painted lines, curbs or other means to indicate individual spaces. Signs or markers, as approved by the Zoning Administrator, shall be used as necessary to ensure efficient traffic operation of the lot.
- (7) *Lighting.* Adequate lighting shall be provided if off-street parking spaces are to be used at night. Equipment for lighting parking facilities shall be arranged so that light does not interfere with traffic or adjoining residential areas.
- (8) *Landscaping.* Off-street parking areas shall be landscaped in accord with the provisions of Section 4-2.

Reiterating, none of the above documents required for an “off street permit

application” were supplied with the variance request permit application for review.

Per the *S.C. Code Ann § 6-29-800* (setting forth the powers of a board of zoning appeals), concerning variances, a zoning board of appeals is limited to the following:

(2) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

- (a) there are extraordinary and exceptional conditions pertaining to the particular piece of property.
- (b) these conditions do not generally apply to other property in the vicinity;
- (c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

(ii) In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare;

The applicant must also have supporting documentation to prove his unnecessary hardship. The unnecessary hardship may not be a self-inflicted, self-created hardship as cited in *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965). This documentation needs to be included in the variance request permit application.

Pursuant to the City of Mullins Municipal Code of Ordinances (Municode), per *Appendix A-Zoning, Article 9-Establishment, Powers and duties of Officials*,

Commissions and Boards responsible for administration of this ordinance, Section

9.1-Zoning Administrator

- (a) The Zoning Administrator is hereby designated and duly charged with the authority to administer and enforce the provisions of this Ordinance.
- (b) The Zoning Administrator shall accept and examine all applications for construction, land use or reuse, and shall issue permits where such applications are in accord with the provisions of this Ordinance and applicable building codes. He shall direct parties in conflict with this Ordinance, and cause to be kept records and files of any and all matters referred to him.
- (c) If the Zoning Administrator finds that any one of the provisions of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; and shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.

Article 10-Administration, Application and Required Permits, Section 10.2-Responsibility, explains:

- (a) All requests for permits and licenses required by this Ordinance, and legislative change of relief from the terms of this ordinance shall be in the form of an application. The provisions of this Article shall govern the basic requirements for processing different types of applications from initiation to final action and issuance of permit.
- (b) It shall be the responsibility of the Zoning Administrator or his designee to administer the requirements for processing applications and issuing permits in accord with the provisions of this Ordinance.
- (c) It shall be the responsibility of an applicant to provide the required information to process a permit application, secure or renew a license, and present facts about circumstances which would justify a proposed change or modification to the terms and/or application of this Ordinance.

Section 10.3-Types of Applications:

Types of applications for processing matters subject to the requirements of this Ordinance include:

(a) *Applications for Change or Relief.* This includes applications for changes to and/or relief from any part or provision on this Ordinance, of which there are three types of applications:

1. Amendment - is a change to the text or map of the Ordinance.
2. Variance - is an adjustment or modification of any regulation alleged to impose on unnecessary hardship on the use or development of land.
3. Appeal - is a petition by an applicant to reverse or modify a decision of an administrative officer, board, commission or council.

Section 9.1(b) explains that the **zoning administrator** shall accept and examine all applications. *Section 10.2(b)* explains it is the responsibility of the **zoning administrator** to administer the requirements for processing applications and issuing permits. *Section 10.2(c)* states it is the responsibility of the **applicant** to provide the required information to process a permit application which would justify a proposed change.

Plaintiffs attached in their *July 8, 2024 Reply to Respondents' Memorandum Opposing Supersedeas*, copies of documents received from Curtis Richardson, from the City of Mullins, via Freedom of Information Act (FOIA) requests. These documents explicitly display, (1) a full and complete permit application was not provided. No supporting documentation, no plans, surveys, blueprints, lighting, drainage, etc. were attached; (2) No written explanation from applicant justifying his "unnecessary hardship" as required in *S.C. Code Ann § 6-29-800*, asserting this hardship is not self-inflicted; and (3) as *Section 10.2(c)* states, it is the responsibility of the **applicant** to provide the required information to justify the change. However, emails received from Curtis, via the same FOIA request, show on 6/5/23, Curtis himself filled out the Variance Request Form, with applicant explanation, and emailed it to Todd Blevins to sign, with a note saying, "...feel free to modify", Todd

responding with “The phone number on the form needs to be changed...”, expressly showing that Curtis, himself, completed the entire application. Curtis states in his self-written explanation for Todd, “...does not provide sufficient parking...”, full well knowing Todds’ parking issue is a self-created hardship and a variance request cannot be approved for a self-created hardship. *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965). His abuse of discretion seems to have no bounds. It would be remiss to not mention collusion at this juncture, as collusion does mean, “where two (or more) persons pretend to be independent of each other when actually conspiring together for their joint ends.” This is absolutely an obvious abuse of discretion on Curtis’s part as the Zoning Administrator. Collusion and abuse of discretion from the Zoning Administrator is irrefutably present.

Section 10.5-Application procedures for change or relief, lays out, step by step, exactly how an individual is required to proceed with their application for change or relief.

- (a) *Step 1. Administrator Examination.* Upon receipt of an application, the Zoning Administrator shall examine it for completeness, and shall, within ten (10) days, either return the application for additional information or forward it to the responsible governmental authority for review and action.
- (b) *Step 2. Public Notice*
 - (1) *All Applications.* Public notice shall include announcing the application for change or relief in a newspaper of general circulation in the city of Mullins at least 15 days prior to the time the application is scheduled for a public hearing. The notice shall state the nature of the change and the time, date, and place of the hearing.
 - (3) *Application for a Variance.* In addition to public notice in a newspaper of general circulation, notice of an application for a variance shall be given to all parties of interest.

(c) *Step 3. Public Hearing*

- (1) The Mullins Zoning Board of Appeals (ZBA) shall conduct a public hearing on all applications for relief involving variances and appeals.

(d) *Step 4. Review and Action*

(2) *By the Zoning Board of Appeals.*

Applications for a variance shall be evaluated by the Zoning Board of appeals in accord with the conditions prescribed by *Section 9.3-5* of this Ordinance.

9.3-5. *Powers and duties.* The Zoning Board of Appeals shall have the following powers and duties:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination by the Zoning Administrator in the enforcement of this Ordinance.
- (2) To hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provision of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:
 1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
 2. These conditions do not generally apply to other property in the vicinity;
 3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;
 4. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good; and
 5. The character of the district will not be harmed by the granting of the variance.
- (3) All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board, which must be delivered to parties of interest by certified mail.

- (4) In exercising the above powers, the Zoning Board of Appeals may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination and to that end shall have all the powers of the Zoning Administrator from whom the appeal is taken and may issue or direct the issuance of a permit. The Board, in execution of the duties for which appointed, may subpoena witnesses and in case of contempt may certify such fact to the Circuit Court having jurisdiction.

(e) *Step 5. Notification.*

- (1) All applicants for change or relief from the provisions of this Ordinance shall be notified in writing of final action.
- (2) An approved variance or appeal shall be accompanied by an order of the Zoning Board of Appeals to direct the issuance of a permit.

Factoring in the procedures required for a variance application and what occurred with the variance request permit application in this case are substantially different, corroborating the Plaintiffs evidence submitted throughout these proceedings that the City of Mullins Zoning Board did, in fact, violate laws in accordance with South Carolina and the City of Mullins.

To begin with, Hampton Tiller and JP Williams, Attorneys for each respective Defendant, do confirm during the April 22, 2024 court hearing, that Curtis Richardson acted as the Zoning Administrator. (Trans. 4/22/24, p. 13, Lines 20-25) *Mr. Tiller* (For Todd Blevins), “...but it’s my understanding that Mr. Richardson acted as the zoning administrator in the city as well as Building Inspector.” *Mr. Williams* (For BZA), “That’s what I understand.” *Mr. Tiller*, “And so that would have been his position in this.” The City of Mullins own attorney affirming Curtis Richardson as the Zoning Administrator. Therefore, from the start, abuse of discretion was present.

Curtis, the Zoning Administrator, had no authority to complete the variance request permit application for Todd Blevins. The responsibility lay solely on Mr. Blevins. From the moment Curtis typed it up, the entire application was tampered with and should have been invalidated. Curtis did not do that. He abused his power as Zoning Administrator and Building Official. Despite this, when Curtis received the application, his duty, as the Zoning Administrator, was to correctly examine the application for completeness. He was to confirm everything was complete, all required documents were attached, and perform his due diligence in confirming the written explanation to be factual. This verification includes, among others, researching the history of the parcel, additions, expansions, driveways, etc. Following protocol to ensure the variance requested is not a self-inflicted self-created hardship, among any other possible concerns or issues. If anything is not completed, incorrect or missing, by the applicant, the Zoning Administrator is to return it to the individual, per *Section 10.5(a)*. If, after verification of the written explanation, the variance request is an automatic denial, the Zoning Administrator is to return the application with detailed explanation as to why.

Had Curtis performed his due diligence properly, as his Zoning Administrator position required, Todd Blevins' variance request permit application would immediately have been denied, revoked and never proceed further. Reason being, Curtis would flag the application as "self-inflicted hardship" due to building expansions by Todd in 2019 and 2020. Todd Blevins confirms in his *October 11, 2023 Answers to Complaint (Page 2, #12 & #13)*, that he did indeed build, not one, but two additions, to his dentistry practice on his original business lot. The first addition

being approximately 14' x 16' in size and the second is approximately 30' x 31' in size. These two additions added about 1,154sq ft of footprint to his existing business, thereby also removing available area on his business lot to create more parking. This is self-created hardship and immediately disallows any individual from a variance request. Any hardship present in the situation is due to the property owner's own error, or the error of those employed by the owner, and does not arise from the application of the zoning regulations themselves. Wil-Nor Corporation v. Zoning Board of Appeals, 146 Conn. 27, 31, 147 A.2d 197; Misuk v. Zoning Board of Appeals, 138 Conn. 477, 481, 86 A.2d 180. The evidence before the board fully supports this reason for its action. The board was without power to grant a variance when the claimed hardship was due to the property owner's own actions. Booe v. Zoning Board of Appeals, 151 Conn. 681, 683, 202 A.2d 245; Hadik v. Zoning Board of Appeals, 146 Conn. 737, 738, 150 A.2d 606.

Todd Blevins purchased the non-contiguous lot, located across a busy street from his primary business lot in June, 2020, with the full intention of a future parking lot for his dental practice. This also supports the statutes of immediate denial of a variance request due to a self-created hardship. Where one purchases realty with intention to apply for a variance, he cannot contend that restrictions caused him such peculiar hardship that entitles him to special privileges. Rush v. City of Greenville, 246 S.C. 268, 143 S.E.2d 527 (1965). Todd purchased the lot after he already expanded his dental practice with two (2) expansions.

Again, reiterating multiple issues Curtis disregarded or simply did not know because, as Zoning Administrator, he did not perform his required duty of

researching the written explanation, or lack thereof, of the applicant, and just scheduled a public hearing.

The City of Mullins Zoning Board of Appeals has its own set of duties and requirements per the Municode, Appendix A-Zoning, Article 9, Section 9.3-Zoning Board of Appeals: Section 9.3-5. Powers and Duties. The ZBA is to perform their own due diligence in checking the variance request permit application for completeness, confirming facts of the written explanation and researching the history of the lot in question. The ZBA did not do anything. However, in Todd Blevins *July 1, 2024 Memorandum Opposing Supersedeas*, J. Rene' Josey (attorney for Todd) states ..."the record in the Circuit Court included a summary of the testimony and findings of the City Building Official, Mr. Curtis Richardson, who **"testified as an expert"** before the Board providing findings of fact in support of allowing the variance..." The Zoning Board of Appeals arbitrarily and carelessly took Curtis's words as fact, neglecting all the responsibilities and duties for which they were appointed.

CONCLUSION

For the reasons set forth above, Appellants respectfully request this Court reverse the judgment of the Circuit Court.

In addition, Appellants request with this reversal, Respondent, Todd Blevins, be ordered to:

- (1) Immediately discontinue use of the parking lot
- (2) Tear up and remove the concrete parking lot
- (3) Enjoin and flag future variance requests due to self-created hardship

Respectfully submitted,

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