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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)

RESPONDING BRIEF OF APPELLANT(S)

June 2, 2025

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ARGUMENT

In Respondents Initial Brief, Mr. Josey states that Todd Blevins "serves the dental needs of this small town by providing local dental care where none other is available". This is incorrect, as Todd Blevins is not the only Dentist in our "Picturesque small town of Mullins". Dr. John C. Bilder of Mullins Family Dentistry has been a Licensed Dentist since June 1981, having opened his practice in Mullins, on Main Street in 1991.

Respondent continuously claims growth of the practice, while neglecting to acknowledge the building of Two (2) additions to his original square footage, which took away from available parking space on his primary business lot. Reaffirming *Restaurant Row Associates v. Horry County*, supra, where one purchases realty with the intention to apply for a variance, he cannot contend that restrictions caused him such peculiar hardship that entitles him to special privileges which he seeks. Mr. Josey acknowledges Todd Blevins purchased the vacant lot directly across from the dental clinic with the intent to use this lot to provide parking for the dental clinic staff.

On Page 3, Subscript 3 of Respondents Initial Brief, Mr. Josey writes about possible parking or traffic burdens on city streets if Mr. Blevins was to add additional parking to his primary location, while ignoring that Mr. Blevins already has parking on his primary lot. Supplemental parking would not result in increased burdens that are not already present. Subscript 3 further confirms Appellants' argument of Todd Blevin's refusal to utilize his primary business lot to its fullest parking potential. Expressing he wants to preserve the neighborhood aesthetics of the clinic's front

lawn, while putting an eyesore of a concrete parking lot across the street, is contradicting oneself.

On Page 3, Subscript 4, 2nd Paragraph, "the applicable permits, building codes, zoning regulations, and plan submittal requirements must still be complied with throughout the construction process". Per the *Municipal Code of ordinances, Appendix A-Zoning, Article 6-Supplemental Off-Street Parking and Loading Regulations, Section 6.1-Off-Street Parking, Section 6.1-3 Design Standards*. As previously supplied by Appellants via FOIA, to date, no required documentation has yet been submitted.

Mr. Josey maintains the Chairman's Summary should stand unchallenged, along with the City Clerk's Meeting Minutes, however, Appellants assert this is unlawful. The Chairman's Summary is NOT a part of the Meeting Minutes. The Chairman's Summary was typed up One (1) year later, after the original Motion was filed and was conveniently filed with the Court after the Final Hearing. **Most importantly, the Chairman's Summary is NOT a part of the Public Record and cannot be found other than in this filing**. Thereby the Summary of the Chairman is not valid and should not be accepted.

Mr. Josey notes the recent Court of Appeals case of *John's Marine Service, Inc v Oconee County Board of Zoning Appeals, Opinion No. 6101 (February 19, 2025)*, in which the decision was affirmed by the Appellate Court. In the John's Marine case, as bolded by Mr. Josey, **by statute, the circuit court must uphold a decision of the BZA unless there is no evidence to support it,** the outcome is correct. In this instance, the BZA followed protocol of the established guidelines and rules. The variance

request was tabled for the proper research to be completed. The BZA researched the history of the lot, explained in writing their findings confirming the granting of the variance and completed all necessary due diligence. In our case, however, no research was completed, no protocol was followed, no plans, prints or surveys were supplied, etc. *John's Marine Service, Inc v Oconee County Board of Zoning Appeals, Opinion No. 6101 (February 19, 2025* is a perfect example of everything the City of Mullins SHOULD have done but did not. *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).

Research would have found Todd Blevins to be immediately DENIED the variance request due to his self-inflicted hardship from building Two (2) additions (14'x16' and 30'x31') onto his primary building. *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.

Research would have found Todd Blevins to immediately be DENIED the variance request due to his buying of the lot across the street for the sole purpose of using it for parking. *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.

Respondents opening argument summarizes *S.C. Code Ann § 6-29-800* (setting forth the powers of a board of zoning appeals), which details the requirements and findings the Board must provide and explain in writing to proceed with a variance application. Long term growth and investment do not present "extraordinary and exceptional conditions pertaining to the particular piece of property". Variances are granted to alleviate hardship caused by unique, property-specific conditions that make it difficult or impossible to utilize the property. Growth and investment might be related to increased property value, but they are not considered hardship conditions. Variances are intended to address situations where the property is unable to be used in a reasonable manner, not to increase profitability. Investment decisions cannot be a factor to justify a variance. The variance application must demonstrate that the property itself faces a specific condition that makes it difficult to utilize and the Board needs to confirm the findings in writing. A hardship must be specific to the property and not due to the property owner's personal situation or business decisions. In essence, if the property's ability to be used in accordance with zoning regulations is not affected by extraordinary conditions specific to the property, a variance will not be granted. To reassert, Todd Blevins chose to build Two (2) additions (14'x16' & 30'x31'), increasing his business square footage for growth.

Todd Blevins chose to prematurely purchase the empty lot across the street for a future parking lot without first understanding the requirements. It is also Todd Blevins who refuses to utilize his primary business location to its fullest potential. Mr. Blevins, as Appellants have provided and proven with aerial photos, has ample space to add plenty more parking on his existing contiguous parking lot. His defiance of creating more parking, on his primary lot, declaring he wants to keep the neighborhood aesthetics pleasing is not a justification for a variance. Mr. Blevins is more interested in maintaining the pristine look of the front of his business, disregarding the safety of his staff and customers who park across the street. He claims aesthetically pleasing while the parking lot across the street remains un-landscaped with no plantings or flowers, two (2) dimly lit solar overhead lights that do not last through the night, no fencing separating his parking lot from the residence, no signage, etc. When Todd Blevins leaves to go home in the evening and every weekend, we, the residents, are left with a dismal, ugly, barely lit concrete slab used as free parking and a turnaround zone. Mr. Blevins has no care about preserving the neighborhood aesthetics.

Growth of a business is not considered a hardship. As with any business, with growth, brings change, and many times, growth does bring relocation. Mr. Blevins cannot expect to continue to expand and grow in an area where his business is limited in space and land. His dental practice is right in the middle of a residential area. Growth, investments and business decisions are not qualifications for a variance approval. Mr. Blevin's equipment, fixtures and operatories are all a part of his business and play no role in a variance. Despite Blevins Dentistry, in his

opinion, currently being in a convenient location, if his business continues to grow, as Mr. Josey claims, it is inevitable that Mr. Blevins will need to vacate his current address. Patients will either choose to follow him to his new location or go down the street to Dr. Bilder.

It is standard procedure for any growing business to make changes such as extending business hours, efficiently timing appointments and open up weekend hours, etc.

It is not a hardship to lift a sign out of the ground and relocate it to the corner of the property. It is simply something Todd Blevins does not want to do. Blevins Dentistry is not a home. Blevins Dentistry is a business. A full-time 100% business entity. It should be treated as such. Every other business along Main Street has parking backing out onto Main Street. Todd Blevins cannot expect to be treated any differently than any other business owner in Mullins and be gifted a variance because he does not want to give up his pretty front lawn or move his attractive signage.

To reiterate, *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); and *Restaurant Row Associates v. Horry County*, supra all pertain to an applicant's claimed hardship. As with any case, these Three (3) being no different, it is not the circumstance of each case, rather the actual law in question. Case law rules on the law itself and how it applies, rather than dictating the specific type of business someone has. Case law is primarily concerned with the interpretation and

application of legal principles, not the classification of business types. All Three (3) cases show precedence in the Courts interpretation of self-created variance requests.

In Respondents, **The Fourth Element: Lack of Harm**, as previously stated, irrigation and drainage plans have yet to be supplied. Lighting is at a bare minimum, at best, and does not last through the night. No fencing separating the parking lot from the residence has been installed. All public safety concerns have yet to be addressed by Todd Blevins. Again, all required documentation has not been turned into the City of Mullins, Curtis Richardson has not demanded any of the documentation and Todd Blevins has not followed through with any of the requirements. Considering Todd Blevins has yet to complete any of the requirements and the City of Mullins has not demanded a thing, it is reasonable to assume he has no intention of finishing anything.

Appellants have provided more than sufficient evidence to prove that the City of Mullins was arbitrary and capricious in their decision to approve Todd Blevins variance application. The ZBA did not have ANY evidentiary support, other than Mr. Blevins' handmade map. As the Municode, SC Statutes and case law all show, the City of Mullins declined to follow protocol, failed in their due diligence as a committee, betrayed the residence of Mullins and their concerns (as Mr. Blevins "witnesses" were business owners who also left at the end of the day), and blindly approved a variance application without any research, documentation, findings, etc., required by law.

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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PROOF OF SERVICE

I, Nicole Betancourt, *Pro Se Appellant*, do hereby certify that the service of the Responding Brief of Appellants, in the above captioned matter, was made upon all counsel of record by way of Email only on this 2nd day of June, 2025.

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