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

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

Thomas Betancourt, Nicole Betancourt, Jimmy Boatwright, Arnie Boatwright, Norman Whetzel and Kristana Whetzel.....Appellants,

v.

City of Mullins Zoning Board, Dr. Todd Blevins and Blevins Dentistry.....Respondents.

FINAL BRIEF OF RESPONDENTS

Florence, South Carolina

July 14, 2025

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STATEMENT OF ISSUE ON APPEAL

GIVING GREAT DEFERENCE TO "THOSE CHARGED WITH INTERPRETING AND APPLYING LOCAL ZONING ORDINANCES," IS THE DECISION OF THE MULLINS ZONING BOARD OF APPEALS ("ZBA") ARBITRARY, CAPRICIOUS, OR WITHOUT ANY EVIDENTIARY SUPPORT?

STATEMENT OF THE CASE[1]

The Case History and Procedural History of This Appeal.

This is an appeal from the picturesque small town of Mullins in Marion County, South Carolina. The Blevins Respondents serve the dental needs of this small town by providing local dental care where none other is available.

After this South Main Street professional practice was initially established decades ago, the practice has grown in recent years such that additional parking was needed.

After acquiring a vacant lot directly across South Main Street from the dental clinic, a lot which was also already zoned[2] for commercial use and activity, the Blevins Respondents planned to use this lot to provide parking for the dental clinic staff – saving the existing contiguous parking for patients, patient families, and patient caregivers. Because non-contiguous parking is generally

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1 While SCACR 208(b)(1)(A) provides that the Appellants' Statement of the Case "shall not contain contested matters", the Respondents do contest many of the assertions made in Appellant's Statement of The Case, and therefore, as allowed/required by SCACR 208(b)(2), the Respondents offer this Statement of the Case lest they be bound by Appellants' Statement.

For example, in their Statement of the Case (Appellants' Brief pp.7-8), Appellants reference their moot efforts to seek supersedeas, denied by both the Circuit Court and this Court, and they again repeat the erroneous claim that an "automatic stay" was applicable. In motion practice, that claim has been refuted by both this Court and the Circuit Court.

2 The zoning provisions of the City of Mullins municipal code are found in Appendix A to the Code of Ordinances. Article 9 of that zoning appendix sets forth the administrative structure and personnel designated for the administration of the zoning ordinance. These provisions may be found on-line at https://library.municode.com/sc/mullins/codes/code_of_ordinances.

Section 9.1 of Article 9 designates and empowers the "Zoning Administrator" as the person "charged with the authority to administer and enforce the provisions of [the zoning] ordinance". Section 9.2 establishes the "Mullins Planning Commission" and gives that body the powers and duties found in Section 6-29-310 et seq. of the South Carolina Code (the "South Carolina Local Government Comprehensive Planning Enabling Act of 1944"). Finally, Section 9.3 establishes and governs the Zoning Board of Appeals ("ZBA") – also anticipated by the State enabling Legislation. See S.C. Code § 6-29-780 through 860.

precluded by the City zoning provisions,[3] § 6.1-2, the Blevins Respondents applied to the Zoning Board of Appeals ("ZBA") for a variance and the matter was evaluated and presented by City staff,[4] together with the applicant, at a ZBA hearing on August 29, 2023.[5]

Mr. Richardson, the City Building Official, "testified as an expert" before the Board providing findings of fact in support of allowing the variance; specifically he gave a summary of the existing area zoning (AC-1 Residential/Commercial), testified that this zoning classification was not in conflict with the construction of a parking lot; and, in response to question, he explained that the need for a variance arose from the plan for the parking to serve a non-contagious building

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3 Obviously, contiguous parking on the developer/user's primary property helps avoid possible parking or traffic burden on city streets and city parking facilities, but the applicant's acquisition of directly-across the street supplemental parking eliminated any burden on city street parking or city facility parking while preserving the neighborhood aesthetic of the clinic's front lawn.

4 Section 6.3 of the zoning ordinance provides that approval of off-street parking designs and plans shall be the purview of the Zoning Administrator. In this case, the City Building Official, acting as the Zoning Administrator, noted the need for ZBA approval because the planned lot was not contiguous to the business as generally required by of the zoning ordinance.

Notably, the subject of the appeal *was* – and *is* – only the granting of the variance for non-contiguous parking lot *use*; the construction of the parking lot itself does not require a variance – *only* the use of the lot for parking to serve a non-contiguous business. Moreover, it is not the permitting process on appeal. As trial judge noted in his Order, "the applicable permits, building codes, zoning regulations, and plan submittal requirements must still be complied with throughout the construction process." R.p. 4.

Accordingly, much of the Appellants' shot-gun speculative criticisms of the Zoning Administrator, that Administrator's qualifications, the Administrator's approval process for off-street parking designs and plans, the lack of unspecified municipal committees, and other minutia (Appellants' Brief, pp. 12-13, 16-17, 19-20) – are not part of this appeal because they weren't part of the narrow issue requiring a variance. The patient Circuit Court faced a similar issue of judicial economy when the prolific primary Appellant used considerable docket time without focusing on the narrow issue for appeal. R.p. 43 lines 11-15 (Court interrupting to seek focus). *See also* R.p.53 line 7- p. 54 line 13 (transcript of Circuit Court appeal showing patience with scattered multi-party presentations).

5 Appellants' Statement of the Case represents that this hearing was August 29, 2023 (Appellants Brief p. 5) but the Clerk's minutes are dated August 20th. The public posting of the Agenda and the minutes also reflect the hearing was Tuesday, August 29, 2023. The Respondents do not think the scrivener's error in the date is of any consequence either way.

(across the street private parking for growing number of employees)(see also ¶ 8(b) of the Complaint); and he testified as to the historical growth of the dental practice and the consistency of the requested variance with the growth of the City of Mullins businesses. R. pp.117 (Chairman's certified written summary filed with the Circuit Court). The variance applicant, Dr. Blevins, also addressed the ZBA regarding the need for parking "to accommodate his employees." R.p. 115 (Meeting Minutes of the City Clerk).

Following the hearing, the ZBA voted to approve the variance. The decision was reduced to writing: first in the City Clerk's two-page four-point minutes of the ZBA meeting (also signed by Chairman Spencer Jordan), R. pp.115-116, and later in Chairman Jordan's signed and attested (certified by the City Clerk) written summary of the hearing testimony and findings of the City Building Official, Mr. Curtis Richardson.[6] R. p. 117.

A small group of persons, including the clinic's adjacent commercial business property owners,[7] chose to appeal the ZBA decision to Circuit Court. R. pp.10-31. (Circuit Court Complaint filed September 12, 2023). The matter was heard in Circuit Court on April 22, 2024 – about seven months later. The Record in the Circuit Court included the City Clerk's minutes and the Chairman's summary. In argument to the Circuit Court, the Appellant argued the ZBA was "not

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6 Respondents disagree with the Appellants' characterization of ZBA Chairman Jordan's written summary of the hearing as "completely fabricated". Appellants' Brief p.6. This written summary was signed by the Chairman as true and attested to by the City Clerk – both of whom were present for the hearing. R.p. 115 (ZBA minutes). Appellants suggest that the Chairman's summary is inherently suspect because it was dated after the ZBA hearing and submitted for the Circuit Court, but the reliability of the content was evaluated by the trial judge before the document was considered and relied upon by the trial court. As Appellants note in their brief, they submitted a supplemental response two days after the trial judge's hearing (April 24th) but before his May order. Appellants' Brief p. 7 (post-hearing submission of satellite photos).

7 Appellant Betancourt admitted to being a "business owner" during the Circuit Court hearing. R.p. 42 lines 8-9. As the city staff and ZBA would know, the property of Appellants Betancourt, 618 South Main Street, adjacent to the dental clinic, is used for commercial purposes – electrical contracting. The roof of the Betancourt electrical outbuilding can be seen in Exhibit A filed by Appellants with the Circuit Court on November 8, 2023 and their signage can be seen beyond the fence in the photographs along Main Street in Exhibit B also filed by the Appellants with the Circuit Court on November 8, 2023. R. pp. 118-123.

supposed" to make a decision (contrary to their statutory role, S.C. Code § 6-29-800(A)(2)) and the matter "was supposed to go on to the planning commission for review." R.p. 43 line 25 to page 44 line 18 (transcript of Circuit Court appeal).

The ZBA decision was affirmed by the Circuit Court on May 9, 2024. The trial court's order found that "The Zoning Board of Appeals decision in granting the variance substantially [complied] with the requirements found in Section 9.3-2 of the Mullins South Carolina Code of Ordinances which is the subject of the Appeal." R.p. 4 (Order of May 9, 2024). As referenced by the trial court in his Form 4 Order, a "certified copy of the findings and discussions of the August 20, 2023 hearing [the public hearing on the variance application] were filed and made part of the record ..." R.p. 4. The appeal to this Court was originally filed on May 28, 2024.

The Appellants now represent that they have *belatedly*[8] obtained the audio recording of the ZBA hearing and have tendered that unauthenticated recording to this Court with their July 16, 2024 correspondence *though it was not part of the trial court's record.*[9] While the Appellants now baldly suggest that "other" non-record evidence (such as the ZBA audio recording) will confirm some *undescribed* error in the Chairman's testimonial summary, those Appellants had at least seven months to discover and develop evidence as their legal burden requires in such an appeal.[10]

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[8] No discovery requests were tendered by Appellants prior to the Circuit Court hearing. The Freedom of Information Act ('FOIA") request(s) that apparently produced the hearing audio recording were submitted after the trial court had rendered its ruling and after this appeal had been taken – as the Blevins respondents pointed out in their November 25, 2024 filing with the Court. The Appellants' Brief asserts, p.7, that a request was made for the audio recording on April 23, 2024 – but this is inconsistent with the FOIA request forms they submitted to this Court on November 18, 2024 (earliest form dated June 14, 2024).

[9] As provided in SCACR 210(c), "The Record shall not, however, include matter which was not presented to the lower court or tribunal." And as further provided in subsection (h) of that Rule, "Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal." *Accord* Spreeuw v. Barker, 385 S.C. 45, 682 S.E.2d 843 (Ct. App. 2009). The undersigned counsel has listened to copies of the recordings provided by Appellants but it would not be appropriate to comment on the actual content since this submission is outside the Circuit Court record.

[10] Appellants chose to invoke the legal process without licensed legal advisors of record and should not now be protected from their failure to properly prepare their case and meet their burden of trial proof; nor should Respondents have to bear further added expense because of Appellants' unfamiliarity with legal process and obligations.

Instead, they would now have this Court speculate about what might be outside the trial record; that is not the Appellate Court's role. Appellants cannot now ask the Appellate Court to join their unsupported suppositions to "later be confirmed". Moreover, although now in possession of this recording, the Appellants point to no specific error of fact in the Chairman's summary. The attested record, both City Clerk's minutes and Chairman's summary, therefore stand *unchallenged* in the trial court's record.

STANDARD OF REVIEW

As noted in the very recent Court of Appeals decision *in* John's Marine Service, Inc. v. Oconee County Board of Zoning Appeals, Opinion No. 6101 (February 19, 2025):

> "The appellate court gives 'great deference to the decisions of those charged with interpreting and applying local zoning ordinances.'" Arkay, LLC v. City of Charleston, 418 S.C. 86, 91, 791 S.E.2d 305, 308 (Ct. App. 2016) (quoting Gurganious v. City of Beaufort, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995)). "In reviewing a decision of a zoning board of appeals, this court applies the same standard of review as the circuit court." Venture Eng'g for DT LLC v. Horry County Zoning Bd. Of Appeals, 433 S.C. 419, 426, 858 S.E.2d 638, 642 (Ct. App. 2021). **By statute, the circuit court must uphold a decision of the BZA unless there is no evidence to support it.** See S.C. Code Ann. § 6-29-840 (Supp. 2024) (providing "[t]he findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury" and "[i]n 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"). "However, a 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." Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004) (quoting Rest. Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)).

(emphasis added).

Accordingly, in light of this limited standard of review, the question is *not*: could a different result have been reached? The question is *not*: could a different result also have some support in the record? The question is *not*: do we agree with fact finding made by the ZBA? But rather, the question is: is that ZBA fact-finding supported by some evidence in the record? The question is: does the ZBA decision have a reasonable relation to a lawful purpose such that it is *not* arbitrary or capricious.

ARGUMENT

I. GIVING GREAT DEFERENCE TO "THOSE CHARGED WITH INTERPRETING AND APPLYING LOCAL ZONING ORDINANCES," THE DECISION OF THE MULLINS ZBA *WAS NOT* ARBITRARY OR CAPRICIOUS AND IT *DID HAVE* EVIDENTIARY SUPPORT.

Statutory Hardship Evaluated By Local ZBA -- Not Appellants

The ZBA has the statutory power to "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*." S.C. Code Ann. § 6-29-800(A)(2)(emphasis added). "The exercise of police power under a municipal ordinance is subject to judicial correction only if the action is arbitrary and has no reasonable relation to a lawful purpose." Town of Scranton v. Willoughby, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1991) (*per curium*).

Considerable local effort has gone into addressing the issues that were raised before the ZBA resulting in a decision. The City Building Official[11] has met with the parties[12] and studied the matter. Dr. Blevins has made his plans, met with persons, and set forth his proposal. The

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[11] Appellants suggest, Appellant's Brief, p. 19, that the same person cannot serve the small town of Mullins as both Building Inspector and Zoning Administrator because "from the start, abuse of discretion was present." Appellants cite no authority for this proposition. Respondents disagree and recognize the reality of small-town staffing.

[12] Indeed, the Appellant represented to the Circuit Court that she "had numerous meetings with Curtis trying to go over the Municode with him" and had "meetings with Mayor Woodbury." R.p. 44 line 25 to p.45 line 2 (Circuit Court appeal transcript). Public service is not illegal collusion. Appellants impliedly suggest that the City Building Administrator should not be helpful to a taxpaying applicant lest they be accused of "collusion". Appellant's Brief, p. 17 ("Collusion and abuse of discretion from the Zoning Administrator is irrefutably present."). Appellants hyperbolically declare the application signed by Dr. Blevins to be without "authority", "tampered with" and subject to being "invalidated" because of the City official's polite constituent service. Appellant's Brief, p. 20. However, there is no proof in this record (nor could there be) that the ZBA decision was the result of such benign public assistance. Moreover, the written record confirms the appropriate consideration of statutory factors. In a similar way, this Court's staff has been helpful to the *pro se* Appellants with their repeated procedural missteps but such public service is *not* illegal collusion.

Appellants have been heard. It is perhaps inevitable that an outcome could not satisfy all. Nevertheless, there has been an open adjudicative process at the city level by appropriate locally-informed persons with a final outcome; the review of that outcome is necessarily very limited.[13] A patient Circuit Court heard from the Appellants and affirmed the wisdom of the ZBA.

Statutory Factors: An Objective & Organic Hardship -- Fixable By Variance Without Harm

"Unnecessary hardship" is not defined in the statute,[14] but it is a need that arises from "extraordinary and exceptional conditions pertaining to the particular piece of property." S.C. Code Ann. § 6-29-800(A)(2)(a) (element one). It is a need that is unique and "[does] not generally apply to other property in the vicinity." S.C. Code Ann. § 6-29-800(A)(2)(b) (element two). It is a need that, if unaddressed, "would effectively prohibit or unreasonably restrict the utilization of the property" and could be addressed by varying from "the application of the ordinance to the particular piece of property." S.C. Code Ann. § 6-29-800(A)(2) (c) (element three). Finally, the ZBA is charged with finding that "the authorization of a variance will not be of substantial

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[13] "On appeal, the findings of fact by the [Zoning] Board shall be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." Wyndham Enters., LLC v. City of N. Augusta, 401 S.C. 144, 147, 735 S.E.2d 659, 661 (Ct.App.2012) (*citing* S.C. Code Ann. § 6–29– 840(A) (Supp.2011)). "In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the [Zoning] Board is correct as a matter of law." Id. at 147–48, 735 S.E.2d at 661. "Furthermore, '[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision.' " Id. at 148, 735 S.E.2d at 661 (*citing* Rest. Row Assocs. v. Horry Cty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)).

[14] As Justice Toal wrote in Rest. Row Assocs., 335 S.C. at 215, 516 S.E.2d at 445, "In South Carolina, "The courts have never undertaken to formulate an all-inclusive definition of `unnecessary hardship'. Although it has been stated that the phrase should be given a reasonable construction, it is recognized that it does not lend itself to precise definitions automatically resolving every case." Stevenson v. Board of Adjustment of City of Charleston, 230 S.C. 440, 448, 96 S.E.2d 456, 460 (1957); Application of Groves, 226 S.C. 459, 463, 85 S.E.2d 708, 709-10 (1955); Hodge v. Pollock, 223 S.C. 342, 348, 75 S.E.2d 752, 754 (1953). As our courts have stated, a statutory "unnecessary hardship" does not require proof there exists "no feasible conforming use". Our supreme court] has upheld the granting of variances where there were feasible conforming uses of the property." Id. at 217, 516 S.E.2d at 446. Indeed, as trial court noted in his order denying supersedeas, more "worrisome", but conforming, uses could be made of the commercially zoned vacant property – other than a small well-landscaped and lighted daytime parking pad for dental clinic employees.

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." S.C. Code Ann. § 6-29-800(A)(2) (d) (element four). The wisdom of the flexibility of these statutory provisions is demonstrated in this case.

Here, the ZBA had the written application for variance signed by Dr. Blevins stating the need for additional non-contiguous parking to serve the dental clinic property. R.pp.83-87 (application). The variance was for the original clinic property – which because of long-term growth and investment presented "extraordinary and exceptional conditions pertaining to the particular piece of property" and its continued use. (addressing element one)

In addition to the application itself, the ZBA heard about the need for the non-contiguous parking lot to service the dental clinic from witnesses at the hearing – Dr. Blevins and six other speakers identified in the hearing minutes. R.p. 115. In addition, the City Building Official "noted the need for the parking lot and the restrictions it would have." R.p. 115. As the Chairman summarized, the Building Official testified that "Given the growth of [Dr. Blevins'] business and staffing his request for said variance is to ensure that public parking is available for customers and private parking for staff only." R.p. 117.

As the Building Official documented in the record here, there are several "extraordinary and exceptional conditions" unique to the proposed non-contiguous parking tract as well such as: it was already zoned for commercial use; and it was directly across the street from the building it would serve. Simply stated, the new lot was uniquely suited to serve the need of the original location without changing the zoning or character of other properties. Moreover, the original clinic property would suffer a peculiar harm of diminished utilization if the variance were not approved. (addressing elements two and three).

The Red-Herring of a Self-Created Hardship

In contrast to the actual need stated in the application, demonstrated to the Building Official, witnessed to at the ZBA hearing, and documented in the ZBA written record, and no-doubt observable to the local public, the Appellants' Complaint and Brief relies upon distinguishable case catch-phrases such as "personal preference" (R.p. 15, Complaint ¶ 14), "self-inflicted", and "self-created" (R.p.15, Complaint ¶ 15) to suggest that no statutory hardship exists and that the variance application was therefore inappropriately considered by the ZBA. *See also* Appellants' Brief, pp. 14, 17, 20-21; R.p. 39 line 16 to p. 41 line 1 (Transcript of Circuit Court Web X hearing). Appellants' shallow reliance upon these case catch-phrases is inconsistent with the facts: inconsistent with the region's genuine need for local dental care and inconsistent with the true organic hardship here which the statute wisely suggests may arise from "extraordinary and exceptional conditions pertaining to the particular piece of property."

While Blevins may have purchased the new property with notice of the contiguous parking requirement for any new business established upon that new property, the "hardship" is not to that property; the hardship is to the clinic's continued use of the original clinic property where investment and growth has been over decades – as those on the local ZBA know first-hand. Again, the variance is to allow non-contiguous parking on the new lot to serve the original clinic property. The hardship is not to Blevins $13,249 investment in a vacant lot – the hardship is to the clinic's continued public service through the much larger investment in services, employment, and technology at the clinic across the street. The local ZBA understood this and approved the clinics non-contiguous parking lot. **There certainly is nothing in the record to support the silly notion that decades of growth and increased services were all done where Dr. Blevins could one day seek a non-contiguous parking variance that he "self-created".**

In contrast to such a silly notion, *the real hardship would be* unnecessarily relocating a dental clinic, with all its corresponding sensitive technical equipment, fixtures, and operatories, away from an existing location – a location convenient and known to the local resident patients of Mullins – when a statutorily authorized variance would avoid the hardship. *The real hardship would be*, as the Appellants Complaint baldly suggest, — "scheduling of appointments" to "spread [them] out" and "extend hours" (R.p.16, Appellants Complaint ¶17) – when Appellants have no clue when staffing is available or when patients want to receive dental services. *The real hardship would be* relocating landscaped, tactful, and attractive signage from the front lawn of the existing clinic[15] so that the front lawn could be turned into congested off-street parking backing directly into Main Street.[16]

Moreover, the catch-phrase cases so heavily relied upon by Appellants are easily distinguishable. Unlike the developer in Rush v. City of Greenville, 246 S.C. 268, 143 S.E.2d 527 (1965), who purchased new property unrelated to any prior property's use and *quickly acted* upon acquisition to change some of the new property's zoning classification from residential to commercial (the western tail of the property),[17] the Respondent Blevins has a *lengthy commitment*

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[15] As admitted by the Appellant Betancourt at the Circuit Court hearing, "the front of [the clinic] looks more like a home than anything else." R.p. 41 lines 16-17. *See also* R. pp. 120-123 and R. pp. 126-127 (Circuit Court Exhibits B and D filed November 8, 2023 by Appellants in support of their Complaint).

[16] Despite feigning concern for the residential character of the neighborhood around her commercial electrical location, R.p. 41 lines 2-10, Appellant Betancourt specifically urged the Circuit Court that the Blevins clinic "instead of having grass and landscaping he should be putting the parking lot there...." R.p. 41 lines 23-25.

[17] At the Circuit Court appeal, the developer testified that he was going to construct a large commercial building across the width of the Augusta Road side of the property and use the back strip as an access off of Old Augusta Road. 246 S.C. at 274; 143 S.E. 2d at 529. However, the day after success in the Circuit Court case, the developer/buyer applied to the City for a restaurant permit for a building of much smaller size. This application was withdrawn, however, when the

(decades) to the City of Mullins and the dental clinic location specifically. As noted by the Appellants, the Respondent Blevins first established his clinic location and then expanded its footprint twice over a period of years. Brief pp. 6, 20-21 and R.p.14 (Complaint ¶ ¶12-13). Also, unlike Rush, when Respondent Blevins acquired the subject property across the street, *it was already zoned commercial*, and Respondent Blevins has *not* sought to change the fundamental zoning character of the property. Indeed, he is seeking to preserve the character, appearance, and now long-time utilization of his original clinic property.

Georgetown County Building Official v. Lewis, 290 S.C. 513. 351 S.E.2d 584 (1986), involved a prospective property purchase and parcel division for a use allowed by the zoning (an unstaffed fiberoptic substation) but prohibited by a County Ordinance requiring a 50- foot minimum street frontage. Unlike here, the claimed hardship was not created by any objective and organic growth of the original property's use. Indeed, the hardship did not relate to the property use at all – only its division.

Restaurant Row Associates v. Horry County, 335 S.C. 209, 516 S.E.2d 442 (1999), involved an effort to obtain variance in order to locate an adult entertainment business next to a residential neighborhood in violation of a zoning plan set-back requirement. The zoning plan was specifically part of a County Ordinance establishing adult entertainment zoning regulations. Unlike Restaurant Row, here we are not dealing with adult entertainment and we are not dealing with two conflicting zoned properties (both the clinic and the parking lot are zoned the same – allowing for commercial uses). Obviously, Restaurant Row was not dealing with non-contiguous parking to serve objective and organic growth on a related adjacent property.

City sought to use it to rescind the existing Circuit Court order. 246 S.C. at 275; 143 S.E. 2d at 530.

Moreover, moving an adult entertainment venue does not present the same logistical difficulties of technology, equipment, fixtures involved with dental operatories – nor does a club move present a disruption to needed community based medical services.

The Fourth Element: Lack of Harm

The Fourth Statutory element in the statutory analysis is the lack of harm. In this record, there *is* evidentiary support for the ZBA finding of the fourth element as well. The City's Building Official testified that irrigation and drainage, one of many speculative concerns thrown out by Appellants, "will not pose a problem." R.p. 117. The Official also testified that the inclusion of fencing and lighting would eliminate public safety concerns. R.p. 117. Finally, the Official confirmed that all plans would have to be approved by him for code and regulation compliance. R.p. 117. The non-contiguous *use* of the parking lot, as approved by the ZBA and affirmed by the Circuit Court, has not been shown harmful in any way. *To the contrary*, the City Building Official testified that the proposed use was consistent with the desired growth of City of Mullins' businesses. R.p.117.

Further Fact Finding Not Necessary, Appellants Simply Dissatisfied

Having heard from the Appellants, the Respondent Blevins and other supporters, and the Zoning Administrator, the ZBA decision simply found the testimony of the Respondent/Applicant and the Zoning Administrator more credible which is precisely what the fact-finding body is supposed to do – assess the credibility of the witnesses and weigh the evidence. Appellants' superficial argument is that such fact-finding is only arbitrary and careless because the ZBA "took Curtis's [the Zoning Administrator] words as fact" (Appellants' Brief p. 22); but, that fact-finding is precisely the role of this local administrative body and precisely the

type of decision entitled to judicial deference as recognized by the limited scope of review set forth in the statute, S.C. Code Ann. § 6-29-840, and followed by the trial court.

While Appellants, in both their Brief and their Circuit Court arguments, suggest every conceivable flaw in the variance application and every conceivable flaw in the Zoning Administrator's review of the same, they nevertheless advise that *all* the evidence was before the ZBA (and, then, the Circuit Court) to support a denial of the variance for lack of hardship. Appellants' Brief p. 5 ("thorough detail, with evidence"), p.6 ("explained, in depth, the undisputable facts" to Circuit Court). Respondents agree the ZBA and Circuit Court had enough evidence. And, given the evidentiary support in the record for the ZBA's findings, their decision is entitled to statutory deference and should be affirmed by this Court as well.

CONCLUSION

As noted above, the local ZBA is a fact-finder entitled to substantial deference; thus, there is a legislatively limited standard of review such that the *only* real questions are: is that ZBA fact-finding supported by some evidence in the record? And does the ZBA decision have a reasonable relation to a lawful purpose such that it is *not* arbitrary or capricious? Despite the shot-gun scattered assault of the Appellants, the answers to these two questions are clearly both YES. The ZBA decision is clearly supported by the evidence presented to the ZBA by the testimony of the Zoning Administrator and others regarding the neighborhood, the need, the circumstances, and the accommodations for other concerns. The ZBA decision is also clearly related to the lawful statutory purpose of avoiding an unnecessary hardship and further related to the lawful purpose of supporting Mullins' growth and the availability of needed community services.

[SIGNATURE PAGE TO FOLLOW]

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July 14, 2025

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief filed with the Court on or about this date complies with Rule 211(b), SCACR.

Florence, South Carolina

July 14, 2025

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