

nonconforming use of a duplex in the subject zoning district. The Zoning Administrator denied this request. Subsequently, the Petitioner filed an Appeal for Administrative Review by BOZA. In this appeal document, the Petitioner alleged that the Zoning Administrator erred by denying the application seeking grandfather status as a duplex (nonconforming use). After a hearing, BOZA issued a written decision on January 16, 2009, and agreed with the Zoning Administrator that the legal nonconforming use had been lost and could not be reestablished because the property had been vacant for more than 12 months.

Over three years after the previous events described above, the Petitioner filed another application for a variance. Again, the application sought a variance to the lot size requirement to maintain a duplex on the property. BOZA denied the variance by written decision on March 12, 2013. BOZA characterized the issue as a "request for a variance from the lot area requirements to establish a duplex within the RG-1 district." BOZA noted that the property had lost its legal nonconforming status.

II. Findings of Fact and Conclusions of Law

The Respondent asserts that the present action should be dismissed on the grounds of res judicata. The Respondent contends that the Petitioner's previous request for a variance should bar the Petitioner's present request.

Res judicata applies to administrative zoning decisions in order to promote finality of decisions unless it is shown that there has been a substantial change of circumstances since the earlier ruling. 83 Am.Jur.2d Zoning and Planning § 741. Absent an ordinance allowing a property owner to bring successive zoning requests, changed circumstances are required to grant a variance previously denied. Price v. City of Georgetown, 297 S.C. 185, 375 S.E.2d 335 (Ct. App. 1988) (discussing the application of the doctrine of res judicata in the zoning context); see

Kreisberg v. Scheyer, 808 N.Y.S.2d 889 (N.Y. Sup. Ct. 2006) (holding the doctrine of res judicata applies to zoning board determinations and a second application for identical relief by the same person would be barred); Callowhill Center Assocs., LLC v. Zoning Bd. of Adjustment, 2 A.3d 802 (Pa. Commw. Ct. 2010) (holding res judicata will bar relitigation of a request for variance if four elements are present); Rossow v. City of Ravenna, 2002 WL 480061 (Ohio Ct. App. 2002) (holding a second application for variance was barred by res judicata where it did not substantially differ from the first application).

This Court finds that the most recent application for a variance is the same in all material respects to the previous application for a variance and that the Petitioner has not demonstrated a change of circumstances that would have allowed a successive application for a variance. The Petitioner's current submission to BOZA states that she "made the same or similar application some years ago" Upon comparison of the two applications, it appears that the lot size is still the same, if not smaller than originally represented.¹ In each application, the Petitioner asserts that the home is a duplex and that she desires a variance in order to continue such use. The zoning district has not changed during the time from one application to the next.

In support of the Petitioner's most recent application for a variance, she provided to BOZA a document entitled "Expected Submitted Testimony." Upon analysis, this document is identical in almost all respects to the facts presented in support of the original application for variance. For example, in support of the 2008 and 2012 requests, the Petitioner identically states that it would be an "extreme hardship" to convert the home from a duplex into a single family residence and that she "want[s] to continue it in the form it has always been and preserve its design as it is."


¹ The original application for variance stated the lot size was 7,644 square feet. The most recent application states that the lot size is 6,786 square feet. At least 5,000 square feet per dwelling unit is required in the subject zoning district.

It is also clear from a review of the 2008 and 2012 meeting minutes that the grounds alleged in support of the variance do not differ in any material respects. In support of each application, the Petitioner outlines the past history of the home as a duplex and expresses her desire that its use be allowed to continue as a duplex. The Petitioner argues in support of each application that it would be an economic hardship to convert the use from a duplex into a single-family residence. The Petitioner also argued in each application that she had made provisions for parking in the rear of the property.

This Court finds that the Petitioner's most recent application for a variance is identical in all material respects to the earlier application that was denied. The Petitioner did not show a change of circumstances that are required to grant a variance which has previously been denied.

Price, supra.

Therefore, for the reasons stated herein, this Court grants the Respondent's Motion to Dismiss and finds that the Petitioner's appeal is barred by the doctrine of res judicata.



The Honorable James R. Barber, III
Fifth Circuit Court of Common Pleas

8/19, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4002159

Freida H Dortch

City Of Columbia Board Of Zoning Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (For Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

RICHLAND COUNTY
2013 OCT 25 PM 2:14
JEANETTE W. BRIDGES
CLERK

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

Plaintiff's Motion to Reconsider has been DENIED without Oral Argument.

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge *Freida H. Dortch*

Judge Code 2110

Date October 15, 2013

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 28 day of Oct, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

M. Baron Stanton

Peter M Balthazor

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court *Jeanette W. Bridges*