



At the May 3, 2012 Hearing the Appellants requested a variance to Section 2-10.1 of the Uniform Development Ordinance that requires a maximum four-foot wide walkway. After being duly sworn, Mr. Wilkes testified that he was renovating his house and that he had hired one contractor to renovate his house and a separate contractor to work on the walkway. The previous walkway, before the renovation began, was greater than four feet but less than six feet. The contractor for the walkway submitted an application for the walkway permit, but no permit was ever issued, and eventually a stop work order was issued as to the walkway. A six foot walkway was built and Mr. Wilkes testifies that the removal and fixing of the walkway in compliance with the ordinance would cause hardship.

A variance may be granted in an individual case of unnecessary hardship upon a finding by the Board of Zoning Appeals, that: (1) there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; (2) the application of the Zoning Regulations for this particular piece of property will create unnecessary hardship; (3) such conditions that are peculiar to that particular piece of property involved; and (4) relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of the Zoning Regulations with a comprehensive plan.


Based upon the plain language of the ordinance, the Order Issued by the Pawley's Island Board of Zoning Appeals is affirmed.

According to the evidence and testimony presented to the Pawley's Island Board of Zoning Appeals the Appellants were never issued a permit prior to building the walkway, yet the walkway was built and not built the correct width. The hardship of having to remove said parts of the walkway to comply with the Unified Development Ordinance was caused by the contractor and/or owner's agent and was preventable and self induced. Further, there are no

extraordinary and exceptional conditions pertaining to the property, in that there are many similar long walkways which are compliant with the ordinance. Finally, granting relief and allowing the six foot walkway would cause substantial detriment to the public good and impair the purpose of and intent of the zoning regulations with a comprehensive plan.

IT IS, THEREFORE, that the Appellants' request for a variance to Section 2-10.1 to construct a six foot wide walkway is denied and the walkway shall be reduced to four feet in width and brought into compliance with the Unified Development Ordinance.

IT IS SO ORDERED.



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The Honorable Larry B. Hyman, Jr.  
Presiding Judge  
Fifteenth Judicial Circuit

Conway, South Carolina

Dec 8<sup>th</sup>  
~~November 17~~, 2014

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

Robert and Pamela Wilkes,  
Appellants,

v.

Town of Pawley's Island, South Carolina,  
Respondent.

) IN THE COURT OF COMMON PLEAS  
) FIFTEENTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO. 2009-CP-22-2076  
)

ORDER DENYING MOTION TO  
ALTER OR AMEND

JAN 07 2016

SC Court of Appeals

CLERK OF COURT

2015 DEC 21 AM 11:43

FILED  
GEORGETOWN COUNTY, S.C.

**DATE OF HEARING:**  
**PRESIDING JUDGE:**  
**ATTORNEY FOR APPELLANTS:**  
**ATTORNEY FOR RESPONDENT:**

October 12, 2015  
Honorable Larry B. Hyman, Jr.  
Kathryn H. Sligh  
N. David DuRant

This matter is before the court on the Appellants' Motion to Alter or Amend the Order filed on January 7, 2015 pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The matter was heard by this Court October 12, 2015.

**FINDINGS OF FACT**

1. Robert J. Wilkes and Pamela J. Wilkes (hereinafter, "Appellants") own property located at 302 Atlantic Avenue within the municipality of Pawleys Island.
2. The Appellants began extensive remodeling of their residence and built a walkway from their residence to the beach in the Summer of 2009.
3. The appellants applied for a permit for said walkway on June 25, 2009.
4. Thereafter, a walkway was constructed on the Appellants property, without approval and without securing the necessary permits from the Zoning Department.
5. The walkway, landward of the OCRM line, exceeded four feet in width is in violation of the Town of Pawleys Island Unified Development Ordinances.

6. The Appellants contend that their Revised Application for a variance, submitted on November 17, 2009, seeking to allow their walkway exceeding four feet in width, was wrongfully denied.
7. The Appellants base their contention on non-authoritative documents, specifically the “quick analysis tutorial”, which states walkways that exceed four feet in width can be extended to a maximum of six feet in width when two feet of the width of the walkway consists of benching.
8. The Town of Pawleys Island (hereinafter known as “Town”) responds by arguing that the “quick analysis tutorial” is not a legally binding document and that the “tutorial” itself specifically refers to the Pawleys Island Unified Development Ordinances for any stipulation of details.
9. Appellants also contend they are entitled to equitable relief as they assert the Zoning Board of Appeals violated the Freedom of Information Act (“FOIA”) in connection with an executive session.
10. The Town responds that Appellants did not preserve this FOIA issue and Appellants are not entitled to any equitable relief.

#### **PROCEDURAL HISTORY**

11. In 2009 the Town of Pawleys Island informed the Appellants that their walkway exceeded the permissible width provided for in the Town’s zoning ordinance.
12. On August 28, 2009 the Appellants submitted a variance request to the Zoning Board of Appeals and on November 24, 2009 the Appellants request was denied.

13. On Nov. 17, 2009 the Appellants submitted a revised building permit application to the Town of Pawleys Island and to Georgetown County Planning, stating that two feet of said walkway would be benches. The permit was denied.
14. An appeal hearing was held by the Town of Pawley's Island Board of Zoning Appeals on March 29, 2012 at 6:00 P.M. at the Waccamaw Neck Branch Library in Pawley's Island community of Georgetown County, South Carolina. This appeal was denied.
15. The Appellants appealed the denial to the Circuit Court and the Honorable Larry B. Hyman, Jr. issued an Order Remanding the Case for Mediation and Rehearing for Findings of Fact and Conclusions of Law. The matter was eventually reheard by the Zoning Board of Appeals, and the decision issued on May 3, 2013 denied the Appellants' request.
16. The decision of the Zoning Board of Appeals was again appealed by the Appellants and the Honorable Larry B. Hyman, Jr. affirmed the Zoning board of Appeals decision on December 18, 2014 affirming the Pawleys Island Zoning Board of Appeals May 3, 2013 decision.
17. The Appellants filed a Motion to Alter or Amend the Order on January 7, 2015, and this matter was heard by this Court October 12, 2015.

#### FINDINGS OF LAW

18. The Respondents are not estopped from denying Appellants a variance. There is no vested right for the Appellants to have continued use of their walkway. The Zoning Board of Appeals did not violate the South Carolina Freedom Information Act. Further, the final issue which will be discussed below is whether the Appellants' revised application submitted on November 17, 2009 was wrongfully denied.
19. This court has subject matter jurisdiction over this matter on appeal.

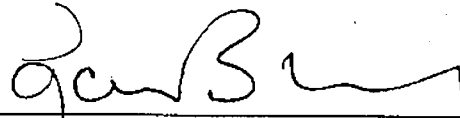
20. The Town of Pawleys Island, S.C., Unified Development Ordinance §2-10.1(2005) allowed all beach walkways to be a maximum of four feet in width. (See "Exhibit A").
21. The Town of Pawleys Island, S.C., Unified Development Ordinance §2-10.1(2005) was the ordinance in effect at the time of the construction of the said walkway, at the time of the application of the Appellants' permit, and at the time of the Appellants' first and second application for variance.
22. The "Pawleys Island Building Permit Procedure", cited to in the Appellant's Memorandum of Law in Support of Motion to Alter or Amend Final Order, is not a Ruling or binding authority.
23. The "Quick Analysis Tutorial", cited in the Appellant's Memorandum of Law in Support of Motion to Alter or Amend Final Order, is not a Ruling or binding Authority.
24. Further, the "Quick Analysis Tutorial" specifically notes that "FOR SPECIFIC GUIDANCE, ALWAYS REFER TO THE UNIFIED DEVELOPMENT ORDINANCE".
25. Ignorance of the law is no defense.
26. The Appellants' construction of the said walkway and request for variances fell under the Town of Pawleys Island, S.C., Unified Development Ordinance §2-10.1(2005), which only allowed for four feet wide walkways landward of the OCRM line.
27. The Appellants use of the secondary sources mentioned above, as reasons for Revised Application Submitted on November 17, 2009 being wrongfully denied, is an insufficient legal authority and an indefensible fault made by the Appellants, whereas stated above ignorance of the law is no defense.
28. The issue of the Zoning Board of Appeals' variance denial is properly denied. The Findings of Fact made by the Zoning Board of Appeals are proper. This Court will not disturb them.

29. The legal issue is whether in November 2009 the Wilkes' Application was properly denied, i.e., did the building department misinterpret the law in November 2009 when the denial of the permit occurred.
30. At the time of both variance applications by the Appellants the Pawleys Island, S.C., Unified Development Ordinance §2-10.1, stated "A structure utilized for the purpose of providing pedestrian access from a residence to the beach. The maximum width of such structure shall not exceed four (4) feet. Construction seaward of the OCRM setback line shall be regulated by that Agency." The Appellants walkway structure or proposed changes in November 2009 did not meet such requirements.
31. The building department did not misinterpret the law in November 2009.
32. The Appellants argue the theory of estoppel, claiming reliance on said secondary sources in constructing their walkway.
33. "He who seeks equity must do equity." Norton v. Matthews, 249 S.C. 71, 152 S.E.2d 680 (1967). Although the Appellants seek equitable relief in their Freedom of Information Act argument. Appellant's have unclean hands in building the walkway without a permit. Their claims under FOIA are denied.
34. The Appellants claim they relied on secondary sources in the construction of their walkway in accordance with those specifications, however the Appellants applied for a permit for construction of walkway, and began and essentially finished construction before any permit was ever issued. Appellants proceeded at their own peril.
35. The applicable Pawleys Island ordinance gives the municipality the authority to regulate walkways exclusively landward of the OCRM setback line. The applicable ordinance in effect in 2009, at the time of said construction, was the Unified Development Ordinance §2-

10.1 (See "Exhibit A"). In November 2009, the applicable ordinance had the same maximum width requirement. The maximum width of pedestrian walkways from the residence to the OCRM setback line is a structure not to exceed four feet in width. The current structure that Appellants have constructed clearly violates the ordinance applicable at the time and, therefore, Appellants' Motion to Alter or Amend Final Order is denied.

**IT IS, THEREFORE ORDERED**, that the Appellants' Motion to Alter or Amend Final Order is denied and the aforementioned walkway shall be reduced in width to comply with the Town of Pawleys Island Unified Development Ordinance in place at the time of construction. Town of Pawleys Island Uniform Development Ordinance §2-10.1 (See "Exhibit A").

**IT IS SO ORDERED.**



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The Honorable Larry B. Hyman, Jr.  
Presiding Judge  
Fifteenth Judicial Circuit

Conway, South Carolina

November 7, 2015

*December*

ORDINANCE NO. 2005-10

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE  
ARTICLE II, INTERPRETATIONS AND DEFINITIONS

INTENT

It is the intent of this Ordinance to amend the existing Unified Development Ordinance of the Town of Pawleys Island, so as to add the term "Beach Boardwalk or Walkway" and include it as part of the definition section, as Article 2-10.1.

WHEREAS, it is necessary and advantageous to establish and adopt Ordinances to promote the public health, safety and general welfare of the residents and visitors to the Town, and to minimize any confusion as to the terminology used to define structures located in the Town;

WHEREAS, it is necessary and proper for the general welfare and convenience of the residents and visitors to the Town of Pawleys Island to create cohesive and unified laws for preserving health, peace and order.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF PAWLEYS ISLAND, SOUTH CAROLINA, PURSUANT TO THE SOUTH CAROLINA CODE OF LAWS 1976 (AS AMENDED), THAT:

The existing Unified Development Ordinance of the Town of Pawleys Island, be amended, so as to include the term "Beach Boardwalk or Walkway" to Article II on page 2-1 of the Unified Development Ordinance:

**2-10.1 Beach Boardwalk or Walkway:** A structure utilized for the purpose of providing pedestrian access from a residence to the beach. The maximum width of such structure shall not exceed four (4) feet. Construction seaward of the OCRM setback line shall be regulated by that Agency.

Adoption of the foregoing Ordinance moved by David Zimmerman and seconded by Mary McAllister and after discussion and call to vote thereon, the vote was as follows:

Those in favor:

Those opposed:

Date of first reading:

November 14, 2005.

Date of second reading:

December 12, 2005.

*Ordinance* 2005-10

APPROVED: *William L. Otis, Jr.*  
WILLIAM L. OTIS, JR., MAYOR

DATE: 12/12/05

ATTEST: *Diane Allen*  
DIANE ALLEN, TOWN CLERK

DATE: 12/12/05