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JAN 25 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA ]  
 COUNTY OF GEORGETOWN ]  
 Robert and Pamela Wilkes, ]  
 Plaintiff, ]  
 -vs- ]  
 Town of Pawleys Island, Georgetown ]  
 County Planning Commission, ]  
 Defendant(s). ]

] IN THE COURT OF COMMON PLEAS  
 ] CIVIL ACTION NO.: 2009-CP-22-2076

NOTICE OF APPEAL, PETITION,  
 REQUEST FOR PRE-LITIGATION  
 MEDIATION, AND COMPLAINT

2009 DEC 21 PM 1:53  
 CLERK OF COURT  
 GEORGETOWN, SC

To: Town of Pawleys Island, and David DuRant, Attorney for Town of Pawleys Island, and Georgetown Planning Commission

**NOTICE OF APPEAL AND PETITION**

YOU WILL PLEASE TAKE NOTICE that the Appellants, Robert and Pamela Wilkes hereby petition and appeal, pursuant to Section 6-29-820 South Carolina Code of Laws (1976, as amended) and any other applicable section(s) of the South Carolina Local Government Planning Act; Town of Pawleys Island, South Carolina Unified Development Ordinance – Article III., 3-7.6; Georgetown County, Zoning Ordinance Article XIII, 1305; as well as other applicable law from the Decision and Order of the Zoning Board of Appeals for the Town of Pawleys Island denying the Petitioners’ request for a variance dated November 24, 2009 and received by the Petitioner by Certified Mail on November 27, 2009.

In support of this appeal and petition, the Plaintiffs submit the following:

1. Robert and Pamela Wilkes (referred to hereinafter as the Plaintiffs) are individuals who own real property located within the Town of Pawleys Island, and County of Georgetown, South Carolina, at 302 Atlantic Avenue, Pawleys Island, South Carolina.
2. The Plaintiffs constructed a walkway to provide pedestrian access from the residence to

the beach.

3. The Plaintiffs applied for a building permit on June 25, 2009. Subsequently, the construction of the walkway proceeded as set forth in their engineered drawings of the walkway; accordingly the walkway is approximately Two Hundred and Thirteen (213) feet long and six (6) feet wide.
4. After the construction of the walkway was complete, the Plaintiffs were informed by Town officials that the walkway was in violation of the Town Ordinances due to width of the walkway exceeding the four (4) feet permitted by Town Ordinance.
5. The Plaintiffs were informed by Town officials that a fine of \$500.00 per diem had been accruing for the alleged violation since June 25, 2009.
6. The Plaintiffs submitted a variance request to the Zoning Board of Appeals for the Town of Pawleys Island on or about August 28, 2009.
7. At the October 13, 2009 the Zoning Board of Appeals Hearing, the Board heard Plaintiff's request for a variance.
8. The Zoning Board of Appeals issued its decision on November 24, 2009, denying Plaintiff's request for a variance.
9. The decision of the Town of Pawleys Island Zoning Board of Appeals violates the rights of the Plaintiffs, violates the Town of Pawleys Island Unified Development Ordinance, and Section 6-29-800 of the South Carolina Code of Laws.
10. The hearing conducted by Town of Pawleys Island Zoning Board of Appeals failed to provide a meaningful hearing by failing to address, consider, and make the requisite findings for the denial or grant of a variance as required by Town Ordinance and State Law.

11. That the Board erred as a matter of law by not fulfilling its statutory mandate requiring that written findings and explanations be made for the granting or denial of a variance as set forth in S.C. Code Ann. § 6-29-800(2)(a)-(d).
12. That the Board erred as a matter of law by not separately stating all findings of fact and conclusions of law as required by Unified Development Ordinance, Article III, 7.5(B).
13. That the Board erred as a matter of law by not adhering to the procedural requirements of the Zoning Regulations contained in the Unified Development Ordinance, Article III, 7.5(B) and (C).
14. That the record is devoid of sufficient evidence to support the Board's findings of fact and final decision, and the record is thus insufficient for review.
15. That the Board's decision is based on surmise, speculation and innuendo and is arbitrary and capricious.
16. That Plaintiffs are entitled to costs associated with this action pursuant to S.C. Code Ann. § 6-29-840 (2003).

#### **REQUEST FOR PRE-LITIGATION MEDIATION**

17. Pursuant to S.C. Code Ann. § 6-29-825 (2003), the Plaintiffs hereby request pre-litigation mediation of this controversy.

#### **COMPLAINT FOR DECLARATORY RELIEF**

18. Plaintiffs are property owners within the Town of Pawleys Island, Georgetown County, South Carolina.
19. The allegations set forth in the introduction to this document and the preceding paragraphs are hereby incorporated by reference.
20. The Plaintiffs are informed and believe that they are entitled to a declaratory judgment;

pursuant to S.C. Code Ann. § 15-53-30, declaring:

- a. That the Plaintiffs are entitled to approval of the constructed walkway by the Town of Pawleys Island, Zoning Board of Appeals, and the Georgetown Planning Commission.
- b. That Plaintiffs' walkway is not in violation of the current Town Ordinances, as the Plaintiffs have submitted an application to construct benches on the walkway which is allowable pursuant to the terms of the General Comments No. 5, of the UDO Tutorial, incorporated by reference into the Town Ordinances.
- c. That the fines imposed by the Town for the alleged violations are null and void, and thus unenforceable.
- d. Alternatively, that the fines imposed by the Town for the alleged violations are stayed as of the date of filing the appeal to the Town of Pawleys Island Zoning Board of Appeals until the resolution of this matter.
- e. That Plaintiffs are entitled to costs associated with this action pursuant to S.C. Code Ann. § 6-29-840 (2003).

#### **EQUITABLE ESTOPPEL**

21. The allegations set forth in the introduction to this document and the preceding paragraphs are hereby incorporated by reference.
22. The Town's conduct precludes the assertion that the Plaintiffs' walkway is in violation of the Town Ordinances.
23. Several other residential lots within the Town and on the beach front have walkways with widths in excess of four (4) feet, and these walkways were constructed after 2002.
24. The Plaintiffs submitted a building permit application that included an engineer's

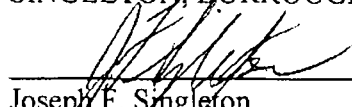
- drawing of the walkway to be constructed with a width of six (6) feet.
25. That during the construction of the walkway and the remodeling of the residence, Georgetown County code enforcement inspected the renovations, and Town officials were aware of the construction taking place.
  26. That, in good faith, Plaintiffs relied on the representations of the Town officials that the construction was not in violation of the Town or County Ordinances.
  27. That, in good faith, Plaintiffs relied on the information set forth in the Town's Zoning Ordinance, including the UDO Tutorial, in constructing the walkway.
  28. That, in good faith, Plaintiffs relied on the specifications set forth in the DHEC - Ocean and Coastal Resource Management (OCRM) Critical Area Permitting Regulations, 30-15(A) , and Georgetown County Zoning Ordinances, Art. IV., 415.
  29. That only after the structure was fully completed, did Town officials inform Plaintiffs of the alleged violation and demand the walkway's removal.
  30. To their detriment Plaintiffs justifiably relied on the representations and conduct of the Town.
  31. Those despite repeated attempts to resolve the purported conflict and reach some sort of compromise with Town officials the Plaintiffs have reached an impasse with the Defendants.

WHEREFORE, the Plaintiffs, Robert and Pamela Wilkes, respectfully request:

- A. This matter be mediated pursuant to S.C. Code Ann. § 6-29-825;
- B. In the event mediation proves unsuccessful, that this Honorable Court enter its Order consistent with the following:

- a. That the Board erred as a matter of law by not granting the Plaintiffs' appeal due to its failure to address, consider, and make the requisite written findings relating to the grant or denial of a variance as required by local and state law;
- b. That the Board failed to establish a record sufficient to support its findings and decision;
- c. That the record is thus insufficient for review, and the Plaintiff is entitled to present additional evidence not set forth in the record on appeal;
- d. That the decision of the Town of Pawleys Island Zoning Board of Appeals denying the requested variance is set aside;
- e. That the relief requested as set forth in the Complaint for Declaratory Relief is granted;
- f. That the Town be estopped from asserting the Plaintiff's walkway is in violation of the Town zoning ordinance;
- g. That Plaintiffs are entitled to costs associated with this action pursuant to S.C. Code Ann. § 6-29-840; and
- h. For such other and further relief as this Court deems just and proper.

SINGLETON, BURROUGHS & YOUNG, P.A.

  
\_\_\_\_\_  
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Kathryn H. Sligh  
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[jsingleton@horrylaw.com](mailto:jsingleton@horrylaw.com)  
[ksligh@horrylaw.com](mailto:ksligh@horrylaw.com)

18 day of December, 2009  
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Robert and Pamela Wilkes,

Plaintiff,

-vs-

Town of Pawleys Island, Georgetown  
County Planning Commission,

Defendant(s).

] IN THE COURT OF COMMON PLEAS  
] CIVIL ACTION NO.: 2009-CP-22-2076

SUMMONS  
(Appeal from disapproval  
of variance request)

RECEIVED

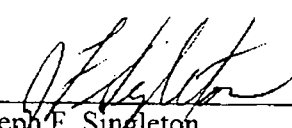
JAN 25 2016

SC Court of Appeals

TO: The Defendants Above-Named:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at (if by mail) Post Office Box 1244, Conway, South Carolina, 29528, or (if by personal delivery) 1303 Third Avenue, Conway, South Carolina, 29526, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint with the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint.

SINGLETON, BURROUGHS & YOUNG, P.A.

  
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Kathryn H. Sligh  
1303 Third Avenue  
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Attorneys for Plaintiff

Conway, SC  
December 18, 2009

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STATE OF SOUTH CAROLINA )  
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 COUNTY OF GEORGETOWN )  
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 Robert and Pamela Wilkes )  
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 Plaintiff(s) )  
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 vs. )  
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 Town of Pawleys Island, Georgetown County )  
 )  
 Planning Commission )  
 )  
 Defendant(s) )

IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION COVERSHEET

09-CP - 22- 2076

2009 DEC 21 PM 1:52  
 CLERK OF COURT  
 GEORGETOWN COUNTY

(Please Print)  
 Submitted By: Joseph F. Singleton  
 Address: 1303 Third Avenue  
 Conway, South Carolina 29526

SC Bar #: 05135  
 Telephone #: 843-248-4229  
 Fax #: 843-248-7182  
 Other:  
 E-mail: jsingleton@horrylaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

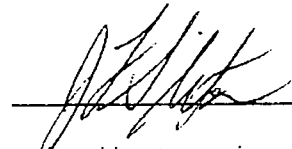
DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |   |  |   |  |
|---|--|---|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul>  | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>  | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Libel (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> <li><u>Mechanic's Lien foreclosure</u></li> </ul>  |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>  | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Driver's License (800)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul>  | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input checked="" type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Administrative Law Judge (980)</li> <li><input type="checkbox"/> Public Service Commission (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> </ul> |  |   |  |

Submitting Party Signature: 

Date: December 18, 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.