

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 30 2016

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Tanya A. Gee, Circuit Court Judge

Case No.

City of Columbia Appellant,

v.

Christ Central Ministries Respondent.

INITIAL BRIEF OF APPELLANT

Natalie A. Ham
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Attorney for the Appellant

TABLE OF CONTENTS

Table of Authorities..... 2

Statement of Issues on Appeal 3

Statement of the Case 3

Statement of the Facts 5

Arguments

I. The Court Erred in concluding that the Zoning Administrator and the Board of Zoning Appeals read a timing element into the ordinance that did not exist.

Conclusion 7

TABLE OF AUTHORITIES

City Ordinances

City of Columbia Ordinance §17-201 – Intent regarding nonconforming structures and uses

City of Columbia Ordinance §17-404(e)(4) – Prohibited signs

STATEMENT OF ISSUES ON APPEAL

- I. Whether the Administrator or Board of Zoning Appeals improperly imputed a time frame into the ordinance?

STATEMENT OF THE CASE

Christ Central is the owner of property located at 2024 Main Street in the City of Columbia, South Carolina. They leased a portion of the property to Lamar Outdoor Advertising, Inc. ("Lamar") for the purpose of maintaining a billboard on the property. In March of 2014, Lamar applied for and was granted a permit under section 17-404(e)(4) of the zoning ordinance to replace the existing sign billboard with a changeable copy billboard. The permit is good for six (6) months. In June of 2014, Lamar applied for and was granted an extension on the time frame of the permit, which would not expire until December 31, 2014.

Lamar removed the fixed display billboard in August of 2014. In September 2014, Christ Central, through a company called Grace Outdoor ("Grace"), submitted an application for a permit to replace the same fixed display billboard with a changeable copy billboard. They were informed that a new permit could not be issued while there was an existing permit for the exact same location. There was no indication from Lamar that it intended for another applicant to finish or replace their current permit.

Lamar's permit expired on December 31, 2014 and they did not replace the sign they previously removed in August of 2014. In January of 2015, Christ Central applied for a permit under section 17-404(e)(4) of the zoning ordinance to erect a sign. However, according to the

ordinance, there must be a sign in place to be changed, and at that time there was not. The zoning administrator denied the request, stating in his letter:

It is my understanding that the non-conforming sign at the above referenced location was removed by the sign owner on or about August 2, 2014. As such, this office would not be able to issue a permit, per §17-404(e)(4), to replace a sign that is no longer existing.

The zoning administrator's decision was upheld by the Board of Zoning Appeals on May 11, 2014.

In June of 2015, Christ Central appealed this matter to the Circuit Court and the appeal was heard by The Honorable Judge Tanya A. Gee on February 25, 2016. Christ Central argued that the ordinance's use of the term "replace" allows for replacement of the sign at any time as long as the other conditions are met and since there is no time frame in the actual ordinance, the zoning administrator and board read a time frame into the ordinance that does not exist. The City did not agree as the process requires an application for a permit to complete the requested work and the permit is good for six (6) months, which provides the applicable time frame. The Circuit Court agreed with Christ Central and reversed the order of the Board of Zoning Appeals. The City of Columbia now appeals.

STATEMENT OF THE FACTS

As this appeal is purely a matter of ordinance interpretation and application of the law, the pertinent facts are set forth in the Statement of Case.

ARGUMENTS

I. THE CIRCUIT COURT ERRED IN CONCLUDING THAT THE ZONING ADMINISTRATOR AND BOARD OF ZONING APPEALS READ A TIMING ELEMENT INTO THE ORDINANCE THAT DOES NOT EXIST

It is undisputed by both parties that the sign in question had obtained a legal non-conforming status under the city's code. Normally a legal non-conforming sign is not allowed to be replaced once it has been removed. See the general regulations in section 17-201 of the city's ordinance, which states in part "...it is the intent of this article to permit nonconformities to continue until they are removed, but not to encourage their survival."

There is an exception allowing the sign to be upgraded to changeable copy under section 17-404(e)(4) of the ordinance, which provides the following:

Notwithstanding the provisions of Division 7 of this article, the fixed display surface area of a legal nonconforming outdoor advertising sign may be replaced in whole or in part by display surface area with changeable copy, except under no circumstance is changeable copy permitted upon an outdoor advertising sign when that sign is within 300 feet of any residential district, including property zoned PUD-R. Generally this permissibility does not

include the replacement of, or some other substantial alteration to, the sign support structure, except where existing metal sign support structures would be replaced with new metal sign support structures.

In order for any property owner to utilize this ordinance section, an application must be submitted to the city's zoning office for a permit to complete the work requesting to be done. Once the permit is granted, it is valid for six (6) months for the work to be completed. The work requested must be done within the constraints of the permitted time frame. Lamar, Christ Central and Grace were all aware of this fact. The time frame can be extended upon application for situations such as equipment ordering/shipping issues or other unforeseeable events.

In the case at hand, Respondent is arguing that the City somehow distorted the timing by its unilateral decision to extend Lamar's permit or that the City imputed a time period into the ordinance that does not exist. In addressing the permit extension, Lamar's permit was granted in March of 2014, which would be valid for six (6) months, expiring in September of 2014. Lamar removed the sign in question in August of 2014. Had Lamar never sought an extension on the permit and the permit had expired in September, since the sign had been removed in August, upon application by Lamar, Christ Central or any other entity seeking to erect a sign in that location, the requested permit would have been denied since there was no existing sign at the time of application, (i.e. the nonconformity had been removed). Christ Central and Grace submitted an application in September of 2014 and previously indicated that they believed Lamar's permit had expired at the time. As previously indicated, the permit application would

have been denied since the sign had been removed and not replaced during the time frame of the active permit, but because Lamar had previously requested and were granted an extension, they were informed of such and told that multiple permits could not be issued for the same location. The City is not required to inform interested parties of its decisions regarding active permits. There is no distorted timing according to these facts.

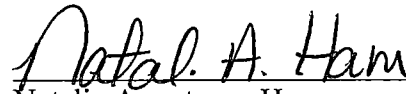
In addressing the claim of an imputed time period into the section 17-404(e)(4) of the ordinance, the City does not believe this has happened. The only way for a landowner or business entity to take action under this ordinance is to apply for a permit from the city authorizing the work. The city will have to evaluate whether there in fact is a non-conformity and whether the requested work to be done falls within the exception of section 17-404(e)(4) prior to granting a permit. Once the permit is granted, the applicant is notified that the permit is valid for only six (6) months and the work must be completed in that time frame. Lamar and Grace have been doing business with the city for years and are well aware of the process and the limitations. While there may not be a specific time frame listed out in the language of the ordinance, there is no way for the ordinance to be activated without the permitting process, which very clearly gives a specific time frame. It is for this reason, the City believes that there was no imputation of a time period and the rules of the ordinances were followed as written.

CONCLUSION

For the reasons stated, this court should reverse the decision of the Circuit Court.

[Signature Page Attached]

RESPECTFULLY SUBMITTED:



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Attorney for the Appellant

March 30, 2016

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

2015-002532

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City of Columbia Board of Zoning Appeals Appellant

v.

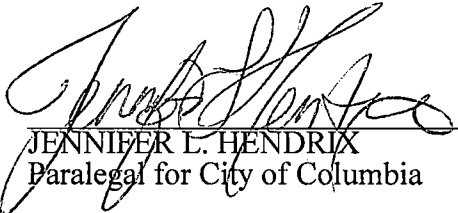
Christ Central Ministries Respondent

PROOF OF SERVICE

The undersigned hereby certifies that she served a copy of the INITIAL BRIEF OF APPELLANT upon the Attorney for the Respondent by placing a copy in the United State mail, first class postage prepaid to him at his office as indicated below on this 30th day of March, 2016:

Jay Bender
Baker Ravenel & Bender, LLP
PO Box 8057
Columbia, SC 29202

March 30, 2016
Columbia, South Carolina


JENNIFER L. HENDRIX
Paralegal for City of Columbia



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SC Court of Appeals

We Are Columbia

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March 30, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
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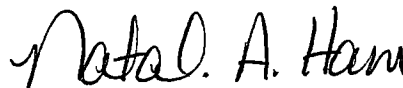
RE: City of Columbia v. Christ Central Ministries
Court of Appeals Case No.: 2015-002532

Dear Ms. Kitchings:

Enclosed for filing, please find the original and one (1) copy the *Initial Brief of Appellant* along with the *Proof of Service* in the above referenced case. Please return the extra copies to the courier of this letter.

By copy of this letter, I am serving same on the attorney for the Respondent.

Sincerely,


Natalie A. Ham
Assistant City Attorney

NAH/jlh
Enclosure(s) as Stated

cc: (w/encl.): Jay Bender, Esquire