

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAY 26 2016

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III

Civil Action No.: 2012-CP-07-01394
Appellate Case No. 2016-000687

GRAYS HILL BAPTIST CHURCH.....Respondent

-VS-

BEAUFORT COUNTY AND THE UNITED STATES OF AMERICA.....Appellants

MOTION FOR EXTENSION OF TIME

Pursuant to South Carolina Rule of Appellate Procedure 240 and 263(b), the United States respectfully moves for a sixty day extension of time, until July 29, 2016, for filing its opening brief in the above-captioned appeal. Counsel for Beaufort County and Counsel for Grays Hill Baptist Church have been contacted and each consent to this request. Respectfully, we believe the United States is exempt from any filing fee associated with this motion.

1. This appeal arises from a dispute over the application of zoning laws designed to protect the U.S. Marine Corps Air Station at Beaufort, South Carolina from encroachment by incompatible development, and to protect public safety by minimizing the damage that would result from an air crash. Respondent has sought to construct a new building within an area that has been designated as an Accident Potential Zone II, meaning that it is in an area where there is increased potential for an accident. The Beaufort County Planning Commission and the Beaufort County Zoning Board of Appeals denied respondent the permits or variances necessary for respondent to proceed with constructing the proposed new building. Respondent challenged

those denials in the Court of Common Pleas and the United States intervened to defend those denials.

2. On March 19, 2013, the Court of Common Pleas entered a Final Order of Judgment concluding that respondent is entitled to the permits needed to proceed with constructing the new building, or, in the alternative, that respondent is entitled to a zoning variance. On February 29, 2016, the Court of Common Pleas denied a motion for reconsideration. A timely notice of appeal was filed on March 29, 2016.

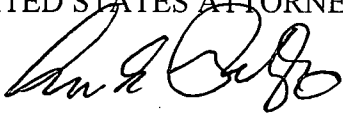
3. Appellant Beaufort County filed a motion for an extension of time for the filing of appellants' opening briefs, which was granted on May 12, 2016. Under the present schedule, appellants' initial briefs are due on May 30, 2016.

4. The United States respectfully requests a further sixty day extension of time, to July 29, 2016, for filing its initial brief. By federal regulation, the Solicitor General of the United States has exclusive responsibility to determine whether, and to what extent, any appeal will be taken by the United States. *See* 28 C.F.R. § 0.20(b). The Solicitor General has not yet had an opportunity to determine whether to authorize appeal in this case. Making that determination will require careful review of the merits of this case, which has a lengthy procedural history. Moreover, in determining whether to authorize appeal, the Solicitor General solicits and considers the views of all potentially affected agencies and officials, which can be a time consuming process. This case, for example, will likely require consultation with the agencies responsible for regulation of both military and civilian aviation. The requested extension will ensure that the Solicitor General has adequate time to review the case and obtain and weigh the considered views of all interested governmental parties and, should appeal be authorized, will provide the government with adequate time to prepare its brief in this case.

5. We will inform the Court and the parties immediately should the Solicitor General decide not to authorize the government's continued participation in this appeal.

(Signature Page Only)

WILLIAM N. NETTLES
UNITED STATES ATTORNEY

By: 

Lee E. Berlinsky (S.C. Bar #63014)

Assistant United States Attorney

151 Meeting Street, Suite 200

Charleston, South Carolina 29401

Telephone: (843) 266-1679

lee.berlinsky@usdoj.gov

May 25, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III

MAY 26 2016
SC Court of Appeals

Civil Action No.: 2012-CP-07-01394
Appellate Case No.: 2016-000687

GRAYS HILL BAPTIST CHURCH.....Respondent

-vs-

BEAUFORT COUNTY AND THE UNITED STATES OF AMERICA.....Appellants

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that they have served the Motion for Extension of Time upon all counsel of record by affixing the same with proper postage and placing same with the United States Postal Service on

____ 25th ____ day of May, 2016 addressed to the following:

H. Fred Kuhn, Jr., Esquire
Moss, Kuhn & Fleming, P.A.
Post Office Drawer 507
Beaufort, SC 29901-0507

Mary Bass Lohr, Esquire
Howell, Gibson & Hughs, P.A.
Post Office Box 40
Beaufort, SC 29901

(Signature Page Only)

Respectfully,
WILLIAM N. NETTLES
UNITED STATES ATTORNEY

By: 

Lee E. Berlinsky (S.C. Bar #63014)
Assistant United States Attorney
151 Meeting Street, Suite 200
Charleston, South Carolina 29401
Telephone: (843) 266-1679
lee.berlinsky@usdoj.gov

May 25, 2016



U.S. Department of Justice

United States Attorney

District of South Carolina

Wells Fargo Building
Suite 500
1441 Main Street
Columbia, SC 29201
(803) 929-3000
FAX (803) 254-2912

151 Meeting Street
Suite 200
Post Office Box 978
Charleston, SC 29402
(843) 727-4381
FAX (843) 727-4443

John L. McMillan Federal
Building, Room 222
401 W. Evans Street
Post Office Box 1567
Florence, SC 29503
(843) 665-6688
FAX (843) 678-8809

55 Beattie Place
Suite 700
Greenville, SC 29601
(864) 282-2100
FAX(864) 233-3158

Reply to: Charleston

May 25, 2016

RECEIVED

MAY 26 2016

SC Court of Appeals

Clerk of Court
Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Grays Hill Baptist Church-Civil Action No. 2016-000687*

Dear Sir or Ma'am:

Enclosed you will find a Motion for Extension of Time from Assistant United States Attorney Lee E. Berlinsky and a Certificate of Service. Included in the FedEx envelope are one (1) original and seven (7) copies of the document. Respectfully, we believe the United States is exempt from the \$25.00 filing fee.

In addition, there is a postage paid and self-addressed envelope for a clocked copy to be sent back to us for our file.

Very truly yours,

WILLIAM N. NETTLES
United States Attorney

Zoe Williams-Barker

Legal Assistant to
LEE E. BERLINSKY
Assistant U.S. Attorney

Enclosures (8)

Insert shipping document here

RT 103
FZ B20
1 10:30
6084
05-26
FF

ORIGIN ID: CHSA (843) 266-1600
LEE E. BERLINSKY

SHIP DATE: 25MAY16
ACTWGT: 0.50 LB
CAD: 108743338/INET3732

151 MEETING STREET
SUITE 200
CHARLESTON, SC 29401
UNITED STATES US

BILL SENDER

TO CLERK OF COURT
COURT OF APPEALS
1220 SENATE STREET

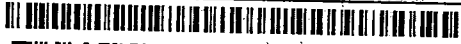
COLUMBIA SC 29201

(803) 734-1890
INV:
PO:

REF:

DEPT:

540016323727F



THU - 26 MAY 10:30A
PRIORITY OVERNIGHT

TRK# 7763 7437 6084
0201

28 USCA

29201
SC-US CAE



MAY 26 2016
SC Court of Appeals