THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Appellate Case No. 2015-002532
Case No. 2015-CP-40-3357

Christ Central Ministries..... Respondent,

v.

City of Columbia Board of Zoning Appeals.....Appellant.

REPLY BRIEF OF APPELLANT

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ARGUMENT

Respondents' arguments are in *italics*. Appellant's reply is in normal font.

On page 4 of the Brief, Respondents argue:

The legislative intent of the ordinance is answered by the language of the ordinance without ambiguity, "...[T]he fixed display surface of a legal nonconforming outdoor advertising sign may be replaced in whole or in part by display surface area with changeable copy..." "...[E]xisting metal sign support structures would be replaced with new metal sign support structures." §17-404(e)(4) Code of Ordinances of the City of Columbia.

When Section 17-404 is read in its entirety, it is clear that the legislative intent is intended only to provide the right to replace a nonconforming sign under certain circumstances. Appellant is conveniently forgetting that the sign in question qualifies as a non-conforming, illegal/prohibited sign. First, the sign is non-conforming because it is not located in the –CS, -AS or the –FS sign overlay district as set out in §17-404(e)(1) Code of Ordinances of the City of Columbia. Secondly, the site where the sign is located is zoned as C-4/DD (Central Area Commercial/Design Development District) – and in those districts, advertising signs are prohibited under §17-404(e)(3) Id.

Understanding that this sign is considered "non-conforming" under the law, we do not have to guess at the intent of the language as the intent regarding nonconforming structures is specifically addressed in §17-201 of the Code of Ordinances of the City of Columbia. This section specifically indicates:

> Within the districts established by this article...there exists lots, structures, uses of land and structures, and characteristics of use which were lawful before the ordinance from which this article is derived was passed or

> before an amendment to this article was passed, but which would be prohibited or regulated and restricted under the terms of this article or future amendment. It is the intent of this article to permit these nonconformities to continue until they are removed, but not to encourage their survival. Nonconforming uses are declared by this article to be incompatible with permitted uses in the districts involved. It is the further intent of this article that nonconformities shall not be enlarged upon, expanded or extended, reconstructed to continue nonconformity after major damage, or used as grounds for adding other structures or uses prohibited elsewhere in the same district.

§17-201 Code of Ordinances of the City of Columbia. Under this section of the ordinance is essentially how a "legal" nonconforming sign can exist but clearly the intent is not for the nonconformity to remain once it is removed.

Section 17-404(e)(4) only exists to allow a non-conforming sign to be converted to a digital sign, which is both legal and conforming. This section cannot be utilized without obtaining permission and a special permit from the City of Columbia. Under §17-404(2), an advertising sign that is removed is not eligible for a permit without first signing a waiver of claims to compensation from the City for such removal, which clearly means that the sign **must be standing and existing** at the time of application for the permit (emphasis added).

Once a sign is removed, even after issuance of a permit granted under 404(e), where the permit was issued for the sign to be converted to digital, the non-conforming sections of §17-201 and 1702(c) come into play. To apply the section as Respondent suggests would mean that anyone that has ever taken a static billboard down could claim a right to convert the former to digital at any time and without a permit. Section 404(e) does not come back into play until the sign is again erected as digital, which the permit

would allow them to do. Essentially, if the sign owner obtains a permit to convert a sign to digital under 404(e), obtains the proper permit, removes the nonconforming sign, and fails to erect the new sign within the confines of the permit, they are done. They, or anyone, cannot be granted a permit under 404(e), because at the time of application, the sign is not existing. To issue a new sign permit for that site, after the sign has been removed, is to erect a new sign, which is clearly in violation of §17-404(e)(1) and (3).

In the present case, Lamar owned the sign and obtained a valid permit to convert the sign to digital copy. The City cannot issue additional permits for the same work under any circumstances. Lamar removed the sign and walked away without erecting the digital copy sign pursuant to the language of the operable ordinance section. That means game over for Lamar and anyone who comes after Lamar requesting to erect a sign at that location.

Additionally, the City has a "cap and replace" incentive program, where sign owners can take a non-conforming sign down and use that removal as a credit towards erecting a new sign at another conforming location. Both Lamar and Grace are keenly aware of this program and have participated in it on numerous occasions. This clearly furthers the understanding of the intent of the ordinances when read as a whole and not just merely focusing on one subsection alone as Respondent would have you do. While Respondent has focused on the term "replaced" specifically from section 404(e)(4), and while he is correct in the common meaning and definition of the word, that section cannot be properly read and understood without considering the intent and language of the other sections of Division 7 of the ordinances.

CONCLUSION

Here there are no operable facts in dispute. Lamar obtained a permit to replace the sign with digital copy; during the pendency of the permit Lamar removed the sign; the permit expired without a new sign being erected; a new entity applied to erect a new sign at a non-conforming site; the new entity, Respondent, was denied pursuant to the law. Respondent would have you believe that because the intent of the property owner was expressed prior to the expiration of the permit, that it carries weight when assessing this matter. It does not. The intent of the legislation and the interpretation of the language are reasonable under these facts. The zoning administrator's decision was sound and based on the law. Respondent's argument is flawed beyond comprehension due to the tunnel vision of focusing only on a small subsection (one word even) of a very large extensive section of the Code of Ordinances.

Wherefore, having replied in full, the Appellant seeks that the Orders of the lower court be reversed and the case be remanded for issuance of an injunction.

RESPECTFULLY SUBMITTED:

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