

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2017-002095

**RECEIVED**  
JAN 11 2018  
SC Court of Appeals

Elizabeth Earley, John Earley, Lloyd Wilkins,  
Henry Kerns, Margie Mills Kerns, Donna Pearson,  
and Bruce Pearson,

Appellants,

v.

The City of Woodruff, SC, and  
The Terraces at Woodruff,  
a South Carolina Limited Liability Company,

Respondents.

**APPELLANTS' RETURN TO MOTION TO EXCLUDE  
MATTER FROM THE RECORD ON APPEAL**

On or about January 3, 2018, Respondent City of Woodruff filed a motion with this Court requesting that the following materials be stricken from the Appellants' proposed Record on Appeal: (1) excerpts from the City of Woodruff Zoning Ordinance; and (2) the Plaintiffs'/ Appellants' affidavits dated January 3, 2017. In support of its motion, the City contends that the circuit court excluded certain materials from consideration, that others were not presented to the circuit court until after the January 3, 2017 hearing on the Respondents' Motion to Dismiss, and that others were never presented to the circuit court for its consideration. This return to the City's

motion will first address inclusion of the Plaintiffs'/Appellants' affidavits in the Record on Appeal and will then discuss the propriety of including excerpts from the City of Woodruff's Zoning Ordinance in the appellate record.

**I. THE APPELLANTS' JANUARY 3, 2017 AFFIDAVITS SHOULD BE INCLUDED IN THE RECORD ON APPEAL.**

In the circuit court, the Respondents successfully argued that the Plaintiffs'/Appellants lacked standing to challenge an alleged act of spot zoning by the City of Woodruff based on the Complaint's failure to track the specific language of S.C. Code Section 6-29-760(C) by averring that the Plaintiffs' were "owners of adjoining land" *vis-à-vis* the property whose zoning they were challenging. The Respondents' success below was predicated, in part, on the circuit court's willingness, under *Carnival Corporation v. Historic Ansonborough Neighborhood Association*, 407 S.C. 67, 74, 753 S.E.2d 846, 850 (2014), to exclude from its consideration the Plaintiffs' affidavits, pre-filed on January 3, 2017, which were proffered for the express purpose of clarifying the physical distance of each Plaintiff's home from the disputed property. It is crucial to the Respondents' success on appeal that this Court should also decline to consider any evidence which might tend to weaken the circuit court's finding regarding the proximity of the Plaintiffs/Appellants to the property in question.

The Appellants in their Initial Brief have argued that circuit court erred in interpreting S.C. Code Section 6-29-760(C) so narrowly as to conclude that no person whose property does not actually abut the property affected by a given municipal zoning decision may ever have standing to challenge such decision. (Initial Brief of Appellants, pp. 5-8.) However, even were this Court to adopt such a restrictive interpretation of the statutory grant of standing, the Appellants have argued that their Complaint should not be dismissed on the basis of an arcane

code pleading standard. (Initial Brief of Appellants, pp. 5-8.) The circuit court should, instead, have given the Plaintiffs the benefit of the doubt that when they alleged that they lived in the “immediate vicinity” of the Property, or in the neighborhood “immediately across Armory Drive” (Complaint, p. 1), such language is broad enough to include the class of “owners of adjoining land” which, according to the City, are the only individuals who possess standing to challenge its zoning decisions. Such an approach would have been in keeping with the well-established requirement that a decision to grant or deny a motion to dismiss must rest on the most liberal construction of the allegations in the complaint. “The facts as alleged in the Complaint “should be construed liberally[,] and the Court must presume all well pled facts to be true so that substantial justice is done between the parties.” *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604 (2011) (internal quotes omitted); see also *Russell v. City of Columbia*, 406 S.E. 2d 338, 305 S.C. 86 (1991) (“To ensure substantial justice to the parties, the pleadings must be liberally construed”). The Respondents would have this Court resurrect a requirement that the Appellants quote verbatim from the applicable statute before they will be given their day in court; but to impose such a high bar for pleadings would be to impose a burden on plaintiffs far in excess of the requirement of Rule 8(a), S.C.R.C.P., which provides that a pleading is sufficient if it contains a jurisdictional statement, “a short and plain statement of the facts showing that the pleader is entitled to relief,” and “a prayer or demand for judgment for the relief to which [the pleader] deems himself entitled.” Moreover, Rule 8(f), S.C.R.C.P. requires that “all pleadings shall be so construed as to do substantial justice to all parties,” and as this Court has more than once acknowledged, “[T]echnical, restrictive or outmoded requirements of Code Pleading are not necessarily required [under the SCRC.P.]” *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 205, 723 S.E.2d 597, 604 (S.C. App., 2012) (quoting *Gaskins v. S.*

*Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct.App.2000) and Harry M. Lightsey, Jr. & James F. Flanagan, *South Carolina Civil Procedure*, pp. 93–94 (2nd ed. 1996)).

Although Respondents accurately point out that "[i]n considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint. . . ,” they fail to address the corollary rule that a motion to dismiss “may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory,” *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604 (2011) (internal quotes omitted). Respondents also neglect to comment upon South Carolina appellate courts’ well-established practice of refusing to grant a dismissal when novel questions of law are involved, or when challenges raised in a motion to dismiss might easily be addressed upon further development of the facts. *See Unisys Corporation v. South Carolina Budget & Control Board*, 346 S.C. 158, 165, 551 S.E.2d 263 (S.C., 2001) (“As a general rule, important questions of novel impression should not be decided on a motion to dismiss. Where, however, the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss.”).

As the Respondents accurately state in their motion, the circuit court declined to consider the Plaintiffs’/Appellants’ affidavits at the January 5, 2017 hearing, and again at the September 25, 2017 hearing. These affidavits offered to clarify that, in the case of several of the Appellants there is no intervening land between the Property and those Appellants’ properties other than a road, Armory Drive. (Transcript of January 3, 2017 hearing, pp. 3-4, Transcript of September 25, 2017 hearing, p. 9, lines 14-20, Affidavit of Donna Pearson, January 3, 2017, p. 1, Affidavit of Donna Pearson, January 3, 2017, p. 1, Affidavit of Bruce Pearson, January 3, 2017, p. 1,

Affidavit of Margie Mills Kerns, January 3, 2017, p. 1.).<sup>1</sup> Appellants have argued in their brief that under *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (S.C. 1999), these affidavits should have been considered for the limited purpose of establishing jurisdiction (i.e., that the Plaintiffs' possessed standing to sue), and that the circuit court could have done so without converting its decision into a summary judgment. As the *Baird* Court explained, "affidavits and other evidence outside the pleadings may, in certain circumstances, be considered in support of a motion to dismiss based on lack of jurisdiction. For instance, when the allegations of the complaint are factually sufficient . . . but do not affirmatively show subject matter jurisdiction, the motion to dismiss may be supported by, and the court may consider, affidavits or other evidence proving lack of jurisdiction." *Baird*, 333 S.C. at 529.

Rule 210, S.C.A.C.R., merely requires that "[t]he Record shall not . . . include matter which was not presented to the lower court or tribunal." As the Respondents admit that the Appellants' affidavits were twice specifically rejected by the circuit court (Motion to Exclude, and as the affidavits are clearly relevant to the substantive question of standing at issue in this matter, Appellants respectfully suggest that no basis exists for excluding the Appellants affidavits from the Record on Appeal.

## II. EXCERPTS FROM THE CITY OF WOODRUFF'S ZONING ORDINANCE SHOULD BE INCLUDED IN THE RECORD ON APPEAL.

The Respondents also argue that the Appellants should be prohibited from including excerpts from the Woodruff Zoning Ordinance in the Record on Appeal on the basis that portions of the Ordinance were not presented until after the initial Order of Dismissal on May 24,

---

<sup>1</sup> Although the Affidavit of Henry Kerns was dated January 3, 2017, Mr. Kerns' affidavit was apparently not filed initially with the other Plaintiffs' affidavits. Plaintiffs sought to redress this omission when they re-filed their affidavits together with the Motion to Reconsider on June 2, 2017.

2017, or were not presented to the trial court at all. These excerpts were offered in order to demonstrate that, despite the City's protestations to the contrary, its own zoning ordinance recognizes a class of landowners possessing a heightened interest in the outcome of zoning changes which is broader than the "owners of adjoining land" standard advocated by the City.

Appellants concede that this argument was not presented to the trial court at the initial hearing on January 3, 2017. However, in bringing the language of the Woodruff Zoning Ordinance to the circuit court's attention in their Motion to Reconsider, the Plaintiffs were not acting *sua sponte*. Instead, the excerpts challenged by the Respondents (with the possible exception of pages 14-15, 34, and the Use Table as suggested in the Respondents' Motion to Exclude, p. 2) were offered as part of the Appellants' Motion to Reconsider *in response to statutes cited for the first time* in the trial court's May 24, 2017 Order. The court's reasoning, to which the Appellants' introduction of the Woodruff Zoning Ordinance was a direct response, is as follows:

The significance of the "owner of adjoining land" restriction placed on standing by Section 6-29-760(C) is illustrated by a comparison to other standing statutes in the Comprehensive Planning Act. For example, S.C. Code Section 6-29-820 (relating to appeals to circuit court from decisions of the board of zoning appeals) provides, in its subsection (A), that "[a] person who may have a substantial interest in any decision of the board of appeals" may appeal. Section 6-29-900 (relating to appeals to the circuit court from boards of architectural review) uses identical language granting statutory standing to "a person who may have a substantial interest in any decision of the board of architectural review." These are broad statutory grants of standing for particular appeals; Section 6-29-760(C) is not a broad statutory grant of standing.

(May 24, 2017 Order of Dismissal, p. 7). This line of argument by analogy to prove that the Plaintiffs' lacked standing under S.C. Code Section 6-29-760(C) had not been presented by opposing counsel at the January 3, 2017 hearing, nor was it presented in memoranda filed with the circuit court prior to the entry of its May 24 Order of Dismissal. It was therefore entirely appropriate that the Appellants should have been permitted an opportunity to respond to an

argument first encountered in the trial court's Order of Dismissal in order to make the circuit court aware of relevant countervailing precedent contained in the City's own ordinance. Indeed, under *In re Timmerman*, 331 S.C. 455, 460, 502 S.E.2d 920 (S.C. App., 1998), Appellants were arguably obligated to challenge the trial court's theory in a Rule 59(e) motion in order to perfect their appeal:

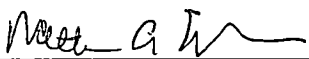
When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal. . . . *Godfrey v. Heller*, 311 S.C. 516, 429 S.E.2d 859 (Ct.App.1993) (where theory of relief was first raised in lower court's order, appellant must challenge this theory with a Rule 59, SCRCP motion).

Excerpts from the City of Woodruff Zoning Ordinance were attached as part of Exhibit "E" to the Plaintiffs'/Appellants' June 2, 2017 Motion to Reconsider, and were referred to during the hearing on September 25, 2017, hearing (Transcript of Hearing, September 25, 2017, pp. 8-10).

## CONCLUSION

For the foregoing reasons, the Appellants respectfully submit that Respondent City of Woodruff's Motion to Exclude Matter from the Record on Appeal should be denied, and that the Appellants should be permitted to submit the materials listed in their Designation of Matter to be Included in the Record on Appeal.

January 10, 2017

  
\_\_\_\_\_  
Nathan A. Earle (S.C. Bar No. 73814)  
1541 Wade Hampton Blvd., Suite E  
Greenville, SC 29609  
(864) 915-5228  
nathanearle@upstatelegal.net  
Attorney for Appellants

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG )

SEVENTH JUDICIAL CIRCUIT

ELIZABETH EARLEY, JOHN )  
EARLEY, et al., )

C.A. # 2016-CP-42-3288

Plaintiffs, )

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'  
MOTION FOR TEMPORARY RELIEF  
and IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

-versus- )


THE CITY OF WOODRUFF, SC, )  
and THE TERRACES AT )  
WOODRUFF, a South Carolina )  
Limited Liability Company, )

Defendants. )

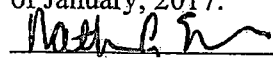
The undersigned, being duly sworn, swears or affirms as follows:

1. My name is Margie Mills Kerns. I am over 18 years of age. I live at 325 Chamblin Street, Woodruff, SC 29388. I have resided at this address for over 30 years.
2. My home is located directly across Armory Drive from the Property which is the subject of the above-referenced lawsuit.
3. Our neighborhood is (or was until the Defendants began construction) a safe, quiet, peaceful, established community of hardworking homeowners. Most or all of the homes in the immediate vicinity are owner-occupied.
4. To the best of my knowledge and belief, my home was zoned R-1 at the time I moved in. During the entire time I have resided at 325 Chamblin Street to my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification, except for the effort in the summer of 2016 to rezone the Property which is the subject of this lawsuit to an R-3 designation. I am informed that one other effort was made to rezone the subject Property in 2000 or 2001 to accommodate a

- mobile home on a foundation as a single-family dwelling (consistent with the R-1 designation).
5. In early 2016, I became aware that the Property was being developed, and my husband and I began making inquiries about the project.
  6. In March of 2016, we received a letter from the City of Woodruff (Attached as Exhibit A) indicating that a private developer had purchased the Property and planned to install a 20-unit duplex housing development. The letter further (and inaccurately) indicated that plans submitted by the developer met all city and county zoning and setback requirements. No mention was made in the letter about an office or community center being part of the proposed development.
  7. My husband expressed concerns about the project to Mayor Kenneth Gist, others on City Council, and the City Manager. In May of 2016, our neighbor Donna Pearson and my husband met with the Woodruff City Manager.
  8. My husband and I started attending City Council meetings and also helped to pay for a title search of the Property from a local attorney. Despite our best efforts were never able to obtain accurate information about the project during the summer of 2016.
  9. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street, about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.
  10. Throughout the entire process the City of Woodruff has given us and our neighbors the runaround, refusing to answer questions, shifting responsibility, and promising to provide zoning documentation that was never delivered.

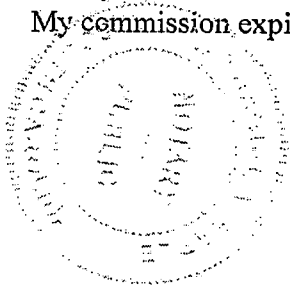
  
Margie Mills Kerns

SWORN to before me this 3rd day  
of January, 2017.

  
\_\_\_\_\_

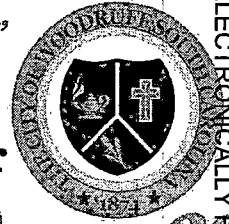
Notary Public for South Carolina

My commission expires: June 10, 2025



*"Time Well Spent"*

# The City of Woodruff



ELECTRONICALLY FILED - 2017 Jan 03 8:01 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203288

Residents,

A private developer has purchased land in your area to develop the "Terraces at Woodruff", a 20-unit duplex housing development. The developer has met all zoning and setback requirements for the City of Woodruff. Site and building plans were submitted to and approved by Spartanburg County as well.

The developer utilizes federal low income housing tax credits to subsidize the cost of construction by selling those tax credits at a reduced cost to large corporations.

This is not a housing authority project. The Terraces at Woodruff will be managed by a property management company with several requirements for their residents including the completion of a criminal background check, credit check, income verification, and proof of sufficient rental history. Additionally, residents must have an annual income of no more than \$36,000. No pets will be allowed, with the exception of service animals. All residents will be required to pay monthly rent to the management company. The developer of the property is required to set aside maintenance and repair funds to cover the next 20 years of upkeep expenses for the property. This will aide in repairs and visual upkeep of the property.

We have provided a link [www.CityofWoodruff.com/NewDevelopment](http://www.CityofWoodruff.com/NewDevelopment) to find further information on the project including renderings, brochures, and location maps.

We expect this development to be a positive addition to the Woodruff community and wanted to make you aware of the project that will be upcoming in your neighborhood. Please contact us if you have any questions.

Sincerely,

City of Woodruff

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
  
ELIZABETH EARLEY, JOHN )  
EARLEY, et al., )  
  
Plaintiffs, )  
 )  
-versus- )  
 )  
  
THE CITY OF WOODRUFF, SC, )  
and THE TERRACES AT )  
WOODRUFF, a South Carolina )  
Limited Liability Company, )  
 )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

C.A. # 2016-CP-42-3288

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'  
MOTION FOR TEMPORARY RELIEF  
and IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

The undersigned, being duly sworn, swears or affirms as follows:

1. My name is Bruce Pearson. I am over 18 years of age. I live at 460 Stone Ave., Woodruff, SC 29388. I moved in to this home with my wife when she inherited it in 2013. We have resided at this address continuously since that time. Our home is a single-family dwelling. Ours is a quiet, safe, peaceful, established residential neighborhood. Most or all of the homes in in our community are occupied by their owners.
2. Our home is located directly across Armory Drive from what is projected to become the entrance to the business office of the Terraces at Woodruff Community, which is the subject of the above-referenced lawsuit.
3. To the best of my knowledge and belief, our property has been zoned R-1 for several decades. To my knowledge there has been no effort to rezone our property or any other surrounding property to any other zoning classification other than the attempt that was made in summer of 2016 to rezone the Armory Drive Property which is the subject of

this litigation to R-3. I am informed that one other effort was made to rezone the Property in about 2000 or 2001 to accommodate an owner-occupied mobile home on a permanent foundation (a use which would have been consistent with an R-1 zoning designation).

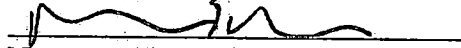
4. In the first week of March 2016 we received a letter from the City informing us of the multifamily housing project that was to be built in our quiet, older neighborhood. A copy of this letter is attached as Exhibit A.
5. On April 26, 2016, my wife and a neighbor, Tammy Farber, spoke at a City Council meeting to ask about when the Property on Armory Drive had been rezoned to allow for multifamily development. She was shown an unsigned copy of what was purported to be the City of Woodruff zoning map indicating an R-2A designation for the Property.
6. In May of 2016, my wife and several of our neighbors attended a City Council meeting to voice concerns about a high-density housing project being built in our low-density neighborhood in violation of established zoning. We will see increased traffic along Armory Drive and Stone Avenue not only from this project but also from a separate Terraces project across town which does not have its own office or meeting facilities. All of our homes are zoned R-1 according to the Spartanburg County tax map.
7. My wife attended a planning commission meeting in July of 2016 but was not permitted to speak at this meeting even though it was a public meeting.
8. My wife was also originally told that she would not be allowed to speak at the special meeting on August 2, 2016 to consider rezoning the Property to R-3. Not until our attorney called the City of Woodruff to inquire about the reasons for this decision did the City decide to allow public input at that meeting.

9. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street, about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.
10. At the time this lawsuit was commenced (on September 1, 2016), the Property on Armory Drive had been cleared but no structures had yet been erected on the Property.



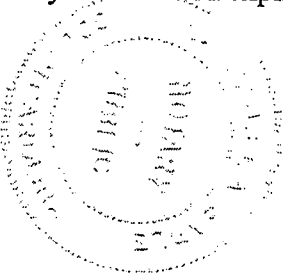
**Bruce Pearson**

SWORN to before me this 3rd day  
of January, 2017.

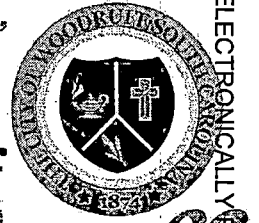


Notary Public for South Carolina

My commission expires: June 10, 2025



*"Time Well Spent"*



# The City of Woodruff

ELECTRONICALLY FILED - 2017 Jan 03 8:01 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203288

Residents,

A private developer has purchased land in your area to develop the "Terraces at Woodruff", a 20-unit duplex housing development. The developer has met all zoning and setback requirements for the City of Woodruff. Site and building plans were submitted to and approved by Spartanburg County as well.

The developer utilizes federal low income housing tax credits to subsidize the cost of construction by selling those tax credits at a reduced cost to large corporations.

This is not a housing authority project. The Terraces at Woodruff will be managed by a property management company with several requirements for their residents including the completion of a criminal background check, credit check, income verification, and proof of sufficient rental history. Additionally, residents must have an annual income of no more than \$36,000. No pets will be allowed, with the exception of service animals. All residents will be required to pay monthly rent to the management company. The developer of the property is required to set aside maintenance and repair funds to cover the next 20 years of upkeep expenses for the property. This will aide in repairs and visual upkeep of the property.

We have provided a link [www.CityofWoodruff.com/NewDevelopment](http://www.CityofWoodruff.com/NewDevelopment) to find further information on the project including renderings, brochures, and location maps.

We expect this development to be a positive addition to the Woodruff community and wanted to make you aware of the project that will be upcoming in your neighborhood. Please contact us if you have any questions.

Sincerely,

City of Woodruff

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG )

SEVENTH JUDICIAL CIRCUIT

ELIZABETH EARLEY, JOHN )

C.A. # 2016-CP-42-3288

EARLEY, et al., )

Plaintiffs, )

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'  
MOTION FOR TEMPORARY RELIEF  
and IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

-versus- )

THE CITY OF WOODRUFF, SC, )

and THE TERRACES AT )

WOODRUFF, a South Carolina )

Limited Liability Company, )

Defendants. )

The undersigned, being duly sworn, swears or affirms as follows:

1. My name is Donna Pearson. I am over 18 years of age. I live at 460 Stone Ave., Woodruff, SC 29388. This is the home I grew up in. I inherited this property in 2013 and have resided at this address continuously since that time. My home is a single-family dwelling. Ours is a quiet, safe, peaceful, established residential neighborhood. Most or all of the homes in in our community are occupied by their owners.
2. My home is located directly across Armory Drive from what is projected to become the entrance to the business office of the Terraces at Woodruff Community, which is the subject of the above-referenced lawsuit.
3. To the best of my knowledge and belief, my property has been zoned R-1 for several decades. To my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification other than the attempt that was made in summer of 2016 to rezone the Property which is the subject of this litigation to R-3. I recall that one other effort was made to rezone the Property in about 2000 or

- 2001 to accommodate an owner-occupied mobile home on a permanent foundation (a use which would have been consistent with an R-1 zoning designation).
4. On the last Wednesday of February, 2016, I noticed that the land now known as The Terraces, was being cleared of all the timber. Two days later I walked over to ask what was going on. I spoke with a gentleman named Avery Lanier, the project manager, who showed me the plans for a multifamily housing project with a n office and other common grounds. I spoke with Avery concerning this project, letting him know that the land was not zoned for this type of housing project. I then proceeded to state that the land was currently zoned as R-1. Avery then stated that the City of Woodruff gave them the go-ahead to build. I then proceeded to the City Hall to speak with Alyson Leslie about the project. I voiced my opinion about the zoning, stating that this housing project couldn't be built under the current R-1 zoning. Alyson handed me a copy of what she referred to as the current zoning map. She stated that the land in question wasn't zoned R-1, but R-2A. She pointed me to a website where I could read the City Zoning Ordinance.
  5. Alyson stated that under the R-2A designation the project was permissible. I inquired about the timing of the rezoning of the Property (and of my property) from R-1 to R-2A. She told me that the rezoning occurred sometime in 2005. I proceeded to ask for proof about the supposed 2005 rezoning but she was unable to provide the requested information.
  6. In the first week of March 2016 we received a letter from the City informing us of the multifamily housing project that was to be built in our quiet, older neighborhood. This was the first time my neighbors learned of the proposed development. A copy of this letter is attached as Exhibit A.
-

7. The City approved this project in January 2016 without a planning commission or public input. The day I received the letter I went to City Hall to speak with Alyson and Lee Bailey about the rezoning of the land in question (the Property) and my own land. Mr. Bailey told me that the City rezoned several properties in 2005, but I continued to ask for proof. About 1 week later Alyson mailed me the Woodruff Zoning Ordinance along with Council meeting minutes from three meetings in early 2005 (January, February, and April). The minutes do reflect changes to the zoning ordinance, but only deal with signage and the location of flea markets. No proposed zoning map is appended to the minutes of these council meetings.
8. On April 26, 2016, my neighbor Tammy Farber and I spoke at a City Council meeting asking when the Property on Armory Drive had been rezoned to allow for multi-family development. At that time Lee Bailey, the city manager, offered me an unsigned copy of what was purported to be the City of Woodruff zoning map indicating an R-2A designation for the Property.
9. In May of 2016, several of my neighbors and I attended a City Council meeting to voice our concerns about a high-density housing project being built in our low-density neighborhood in violation of established zoning. We will see increased traffic along Armory Drive and Stone Avenue not only from this project but also from a separate Terraces project across town which does not have its own office or meeting facilities. All of our homes are zoned R-1 according to the Spartanburg County tax map.
10. My neighbor Henry Kerns and I met separately with Alyson Leslie, at which time she showed me a "Use Table" which purportedly proved that the proposed project would be permissible under the "current" R-2A zoning. As indicated above, our entire neighborhood was and is convinced that our homes are actually still zoned R-1.

11. I made several attempts to let the city know that this housing project violates its own zoning ordinance.
  12. In June of 2016, my neighbors and I attended a subsequent meeting of City Council. At this time, the Council announced five new members of a planning commission that had been dormant up to that time.
  13. On July 5, 2016, I spoke with Allen Durham, Woodruff City Council Member, at Bronco's Restaurant about the Terraces project. I asked him how this particular piece of property was zoned. He responded that the property in question was zoned R-1 and that I knew it and so did the City. He also gave me information about the upcoming planning commission meeting that the City was planning to rezone the Property from an "R-2A" to an R-3 designation.
  14. I attended the planning commission meeting with Elizabeth Early. We were not allowed to speak at this meeting even though it was a public meeting. The brand new planning commission voted on July 27, 2016, to recommend the rezoning to City Council. Before the Planning Commission meeting that evening, the City had already placed an ad in the Spartanburg Herald-Journal that appeared in the paper *before* the Planning Commission met.
  15. The City allowed construction to continue during the rezoning process despite a requirement in the zoning ordinance that construction cease while a rezoning is being considered.
  16. On August 2, 2016, the City Council held a special meeting to approve the zoning change to R-3. Mr. Kerns, John Earley and I were originally told that we would not be allowed to speak at the meeting. Not until our attorney called the City of Woodruff to
-

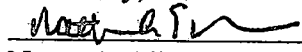
inquire about the reasons we would not be permitted to speak was this decision reversed.

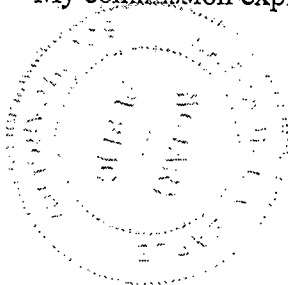
17. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street, about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.

18. At the time this lawsuit was commenced (on September 1, 2016), the Property on Armory Drive had been cleared but no structures had yet been erected on the Property.

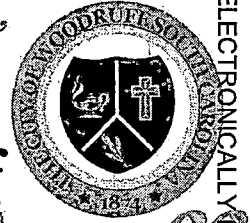
  
Donna Pearson

SWORN to before me this 3rd day  
of January, 2017.

  
Notary Public for South Carolina  
My commission expires: June 10, 2025



*"Time Well Spent"*



# The City of Woodruff

ELECTRONICALLY FILED - 2017 Jan 03 8:01 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4203288

Residents,

A private developer has purchased land in your area to develop the "Terraces at Woodruff", a 20-unit duplex housing development. The developer has met all zoning and setback requirements for the City of Woodruff. Site and building plans were submitted to and approved by Spartanburg County as well.

The developer utilizes federal low income housing tax credits to subsidize the cost of construction by selling those tax credits at a reduced cost to large corporations.

This is not a housing authority project. The Terraces at Woodruff will be managed by a property management company with several requirements for their residents including the completion of a criminal background check, credit check, income verification, and proof of sufficient rental history. Additionally, residents must have an annual income of no more than \$36,000. No pets will be allowed, with the exception of service animals. All residents will be required to pay monthly rent to the management company. The developer of the property is required to set aside maintenance and repair funds to cover the next 20 years of upkeep expenses for the property. This will aide in repairs and visual upkeep of the property.

We have provided a link [www.CityofWoodruff.com/NewDevelopment](http://www.CityofWoodruff.com/NewDevelopment) to find further information on the project including renderings, brochures, and location maps.

We expect this development to be a positive addition to the Woodruff community and wanted to make you aware of the project that will be upcoming in your neighborhood. Please contact us if you have any questions.

Sincerely,

City of Woodruff

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG )

SEVENTH JUDICIAL CIRCUIT

ELIZABETH EARLEY, JOHN )  
EARLEY, et al., )

C.A. # 2016-CP-42-3288

Plaintiffs, )

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'  
MOTION FOR TEMPORARY RELIEF  
and IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

-versus- )

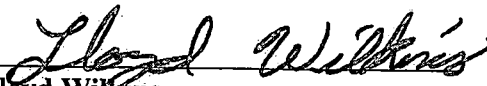
THE CITY OF WOODRUFF, SC, )  
and THE TERRACES AT )  
WOODRUFF, a South Carolina )  
Limited Liability Company, )

Defendants. )

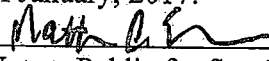
The undersigned, being duly sworn, swears or affirms as follows:

1. My name is Lloyd Wilkins. I am over 18 years of age. I live at 320 Stone Ave., Woodruff, SC 29388. I have resided at this address for over 17 years. My home is a single-family dwelling.
2. Stone Avenue abuts Armory Drive at the point of what is projected to become the entrance to the business office of the Terraces at Wodruff Community which is the subject of the above-referenced lawsuit. My property is located approximately 315 feet from that Property which is the subject of the above-referenced lawsuit.
3. To the best of my knowledge and belief, my home was zoned R-1 at the time I purchased my home and has remained R-1 during the entire time I have resided at 320 Stone Avenue. To my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification other than the attempt that was made in summer of 2016 to rezone the Property which is the subject of this litigation to R-3.

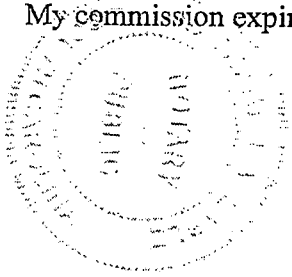
4. In early 2016, I became aware that the Property was being developed and began discussing the situation with my neighbors.
5. In August of 2016, I attended a special public hearing called by the Woodruff City Council regarding the Property but was not allowed to speak at that meeting to express my concerns. The only way I knew about the meeting was through neighbors who obtained information about the meeting from speaking with a City Council member.
6. At the time this lawsuit was commenced (on September 1, 2016), the Property on Armory Drive had been cleared, and there may have been a few footers in place, but no structures had yet been erected on the Property.

  
\_\_\_\_\_  
Lloyd Wilkins

SWORN to before me this 3rd day  
of January, 2017.

  
\_\_\_\_\_  
Notary Public for South Carolina

My commission expires: June 10, 2025



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
  
ELIZABETH EARLEY, JOHN )  
EARLEY, et al., )  
  
Plaintiffs, )  
  
-versus- )  
  
THE CITY OF WOODRUFF, SC, )  
and THE TERRACES AT )  
WOODRUFF, a South Carolina )  
Limited Liability Company, )  
  
Defendants. )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

C.A. # 2016-CP-42-3288

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'  
MOTION FOR TEMPORARY RELIEF  
and IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

The undersigned, being duly sworn, swears or affirms as follows:

1. My name is Elizabeth Earley. I am over 18 years of age. I live at 425 Stone Ave., Woodruff, SC 29388. My husband and I built a house on this property in February of 1998. I have resided at this address continuously since that time. My home is a single-family dwelling. Ours is a quiet, safe, peaceful, established residential neighborhood. Most or all of the homes in in our community are occupied by their owners.
2. Stone Avenue abuts Armory Drive at the point where what is projected to become the entrance to the business office of the Terraces at Woodruff Community which is the subject of the above-referenced lawsuit is located. My property is located approximately 312 feet from that Property.
3. To the best of my knowledge and belief, my property was zoned R-1 at the time my husband and I built our home and has remained R-1 during the entire time I have resided at 425 Stone Avenue. To my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification other than the

attempt that was made in summer of 2016 to rezone the Property which is the subject of this litigation to R-3. I recall that one other effort was made to rezone the Property in about 2000 or 2001 to accommodate an owner-occupied mobile home on a permanent foundation (a use which would have been consistent with an R-1 zoning designation).

4. On about March 3, 2016, I observed that the Property was being cleared, and then on March 5, 2016, three of my neighbors who live closest to the Property received letters purporting to "explain" the proposed development of the Property. This explanation, however, failed to mention that the development would include a business office or community center or that the site would serve as the administrative center for other housing projects in the Woodruff area, of which I am informed there are now three underway.
5. On April 26, 2016, my neighbors Donna Pearson and Tammy Farber spoke at a City Council meeting asking when the Property on Armory Drive had been rezoned to allow for multi-family development. At that time Lee Bailey, the city manager, offered Ms. Pearson an unsigned copy of what was purported to be the City of Woodruff zoning map indicating an R-2A designation.
6. I am informed that in or around May of 2016 my neighbor Henry Kerns spoke with the city manager Lee Bailey and Alyson Leslie, the city planner, upset about the project and wanting answers as to when the property was supposedly rezoned to R-2A and protesting the proposed development.
7. On June 24, 2016, my husband John and I scheduled an appointment for Monday, June 27, to speak with Lee Bailey and City of Woodruff employee Alyson Leslie. When John and I arrived on June 27, we were told that Alyson was unavailable. We met with

Mr. Bailey and the city attorney, Terry Clark, instead. We asked them to provide us with information showing when the Property on Armory was rezoned to R-2A. In an apparent attempt to mislead us, Mr. Bailey originally said, "I think they are wanting to build 1 or 2 duplexes there," but Mr. Clark informed us that in fact 10 duplexes (20 units) were being planned. At that meeting, I communicated that even under an R-2A zoning (which was never properly enacted) the City of Woodruff still could not allow the proposed development. Mr. Clark responded that the land could be subdivided to accommodate the proposed use, but a plain reading of the Woodruff Zoning Ordinance shows that the office/community center component of the project would still be impermissible under an R-2A designation.

8. During the same meeting, my husband John asked for some type of paperwork showing when the Property was rezoned to R-2A from R-1. The city manager Lee Bailey said that it would take about one week to put something together for us. It took nearly a month to receive a package (attached as Exhibit A) purporting to document the alleged zoning changes.
9. Apparently as a direct result of my meeting with Mr. Clark and Mr. Bailey, near the very end of June of 2016, the Woodruff City Council, without any prior notice of which I am aware, appointed five people to the dormant Planning Commission and four people to the Board of Zoning Appeals.
10. On July 6, 2016, my neighbor Donna Pearson learned that the Planning Commission planned to hold a meeting the following day for to vote on a proposal to rezone the Property from "R-2A" to R3.
11. The Planning Commission met on July 7, 2016. Donna Pearson and I attended this meeting together. I specifically asked Lee Bailey that we be allowed to speak at the

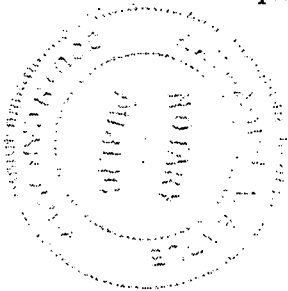
meeting and was informed we would not be permitted to speak. Alyson Leslie and the city attorney, Terry Clark, were also present at this meeting. The planning commission voted to recommend the zoning change to the City Council.

12. On July 26, 2016, my husband John, my neighbor Henry Kerns, and I all spoke at the City Council meeting to explain the negative impact the proposed development will have on our impact the community and to complain about the many irregularities in the way the City had handled the project. Contrary to the baseless predictions of the Defendants' civil engineer, we anticipate an enormous increase in the amount of traffic along Stone Avenue. As already indicated, our street ends at the intersection across from the entrance to the Terraces office complex which is slated to serve not only the 20 duplexes on Armory Drive but also 24 dwelling on the other side of town and apparently about 25-additional acres worth of additional development. Our quiet street will be transformed into a busy cut-through road.
13. On August 2, 2016, the City Council held a special meeting to approve the zoning change to R-3. Donna Pearson, Mr. Kerns, my husband John Earley and I were originally told that we would not be allowed to speak at the meeting. Not until our attorney called the City of Woodruff to inquire about the reasons we would not be permitted to speak was this decision reversed.
14. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street, about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.
15. At the time this lawsuit was commenced (on September 1, 2016), the Property on Armory Drive had been cleared but no structures had yet been erected on the Property.

SWORN to before me this 3rd day  
of January, 2017.

*Notary Signature*  
Notary Public for South Carolina

My commission expires: June 10, 2025



*Elizabeth Earley Signature*  
Elizabeth Earley

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
  
ELIZABETH EARLEY, JOHN )  
EARLEY, et al., )  
  
Plaintiffs, )  
  
-versus- )  
  
THE CITY OF WOODRUFF, SC, )  
and THE TERRACES AT )  
WOODRUFF, a South Carolina )  
Limited Liability Company, )  
  
Defendants. )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

C.A. # 2016-CP-42-3288

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'  
MOTION FOR TEMPORARY RELIEF  
and IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

The undersigned, being duly sworn, swears or affirms as follows:

1. My name is John Earley. I am over 18 years of age. I live at 425 Stone Ave., Woodruff, SC 29388. My wife and I built a house on this property in February of 1998. I have resided at this address continuously since that time. Our home is a single-family dwelling. We live in a quiet, safe, peaceful, established residential neighborhood. Most or all of the homes in in our community are owner-occupied.
2. Stone Avenue abuts Armory Drive at the point where what is projected to become the entrance to the business office of the Terraces at Woodruff Community which is the subject of the above-referenced lawsuit is located. Our property is located approximately 312 feet from that Property.
3. To the best of my knowledge and belief, our property was zoned R-1 at the time my wife and I built our home and has remained R-1 during the entire time we have resided at 425 Stone Avenue. To my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification other than the

attempt that was made in summer of 2016 to rezone the Property which is the subject of this litigation to R-3. I recall that one other effort was made to rezone the Armory Road Property in about 2000 or 2001 to accommodate an owner-occupied mobile home on a permanent foundation (a use which would have been consistent with an R-1 zoning designation).

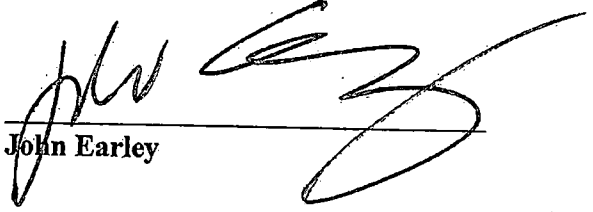
4. In early March, 2016, we observed that the Property was being cleared, and then on March 5, 2016, three of our neighbors who live closest to the Property received letters purporting to "explain" the proposed development of the Property. This explanation, however, failed to mention that the development would include a business office or community center or that the site would serve as the administrative center for other housing projects in the Woodruff area, of which I am informed there are now three underway.
5. I am informed that on April 26, 2016, our neighbors Donna Pearson and Tammy Farber spoke at a City Council meeting asking when the Property on Armory Drive had been rezoned to allow for multi-family development. At that time Lee Bailey, the city manager, offered Ms. Pearson an unsigned copy of what was purported to be the City of Woodruff zoning map indicating an R-2A designation.
6. I am informed that in or around May of 2016 my neighbor Henry Kerns spoke with the city manager Lee Bailey and Alyson Leslie, the city planner, upset about the project and wanting answers as to when the property was supposedly rezoned to R-2A and protesting the proposed development.
7. On June 24, 2016, my wife and I scheduled an appointment for Monday, June 27, to speak with Lee Bailey and City of Woodruff employee Alyson Leslie. When Elizabeth and I arrived on June 27, we met with Mr. Bailey and the city attorney, Terry Clark.

We asked them to provide us with information showing when the Property on Armory was rezoned to R-2A. In an apparent attempt to mislead us, Mr. Bailey originally said, "I think they are wanting to build 1 or 2 duplexes there," but Mr. Clark informed us that in fact 10 duplexes (20 units) were being planned. At that meeting, my wife communicated that even under an R-2A zoning (which was never properly enacted) the City of Woodruff still could not allow the proposed development with the office/community building. Mr. Clark responded that the land could be subdivided to accommodate the proposed use, but a plain reading of the Woodruff Zoning Ordinance shows that the office/community center component of the project would still be impermissible under an R-2A designation.

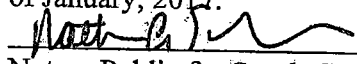
8. During the same meeting, I asked for some type of paperwork showing when the Property was rezoned to R-2A from R-1. The city manager Lee Bailey said that it would take about one week to put something together for us. It took nearly a month to receive a package (attached as Exhibit A) purporting to document the alleged zoning changes.
9. Apparently as a direct result of our meeting with Mr. Clark and Mr. Bailey, near the very end of June of 2016, the Woodruff City Council, without any prior notice of which I am aware, appointed five people to the dormant Planning Commission and four people to the Board of Zoning Appeals.
10. On July 6, 2016, our neighbor Donna Pearson learned that the Planning Commission planned to hold a meeting the following day for to vote on a proposal to rezone the Property from "R-2A" to R3. Without Donna's persistence we would not have known about this meeting.

11. The Planning Commission met on July 7, 2016. Donna Pearson and my wife attended this meeting together. My wife asked to speak at the meeting and was informed she would not be permitted to speak.
  12. On July 26, 2016, my wife, my neighbor Henry Kerns, and I all spoke at the City Council meeting to explain the negative impact the proposed development will have on our impact the community and to complain about the many irregularities in the way the City had handled the project. Contrary to the baseless predictions of the Defendants' civil engineer, we anticipate an enormous increase in the amount of traffic along Stone Avenue. As already indicated, our street ends at the intersection across from the entrance to the Terraces office complex which is slated to serve not only the 20 duplexes on Armory Drive but also 24 dwelling on the other side of town and apparently about 25-additional acres worth of additional development. Our quiet street will be transformed into a busy cut-through road.
  13. On August 2, 2016, the City Council held a special meeting to approve the zoning change to R-3. Donna Pearson, Mr. Kerns, and my wife and I were originally told that we would not be allowed to speak at the meeting. Not until our attorney called the City of Woodruff to inquire about the reasons we would not be permitted to speak was this decision reversed.
  14. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street, about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.
  15. At the time this lawsuit was commenced (on September 1, 2016), the Property on Armory Drive had been cleared but no structures had yet been erected on the Property.
-

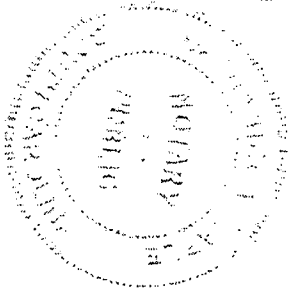
[Affidavit of John Earley—Signature Page]

  
\_\_\_\_\_  
John Earley

SWORN to before me this 3rd day  
of January, 2017.

  
\_\_\_\_\_  
Notary Public for South Carolina

My commission expires: June 10, 2025



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
  
ELIZABETH EARLEY, JOHN )  
EARLEY, et al., )  
  
Plaintiffs, )  
  
-versus- )  
  
THE CITY OF WOODRUFF, SC, )  
and THE TERRACES AT )  
WOODRUFF, a South Carolina )  
Limited Liability Company, )  
  
Defendants. )

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

C.A. # 2016-CP-42-3288

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'  
MOTION FOR TEMPORARY RELIEF  
and IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

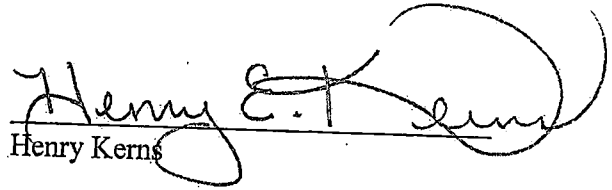
The undersigned, being duly sworn, swears or affirms as follows:

1. My name is Henry Kerns. I am over 18 years of age. I live at 325 Chamblin Street, Woodruff, SC 29388. I have resided at this address for over 20 years.
2. I am married to Margie Mills Kerns, who has resided at 325 Chamblin Street for over 30 years.
3. My home is located directly across Armory Drive from the Property which is the subject of the above-referenced lawsuit.
4. To the best of my knowledge and belief, my home was zoned R-1 at the time I moved in, during the entire time I have resided at 325 Chamblin Street to my knowledge there has been no effort to rezone my property or any other surrounding property to any other zoning classification, except for the effort in the summer of 2016 to rezone the Property which is the subject of this lawsuit to an R-3 designation. I am informed that one other effort was made to rezone the subject Property in 2000 or 2001 to accommodate a

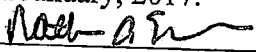
- mobile home on a foundation as a single-family dwelling (consistent with the R-1 designation).
5. In early 2016, I became aware that the Property was being developed, I began making inquiries about the project.
  6. In March of 2016, I received a letter from the City of Woodruff (Attached as Exhibit A) indicating that a private developer had purchased the Property and planned to install a 20-unit duplex housing development. The letter further (and inaccurately) indicated that plans submitted by the developer met all city and county zoning and setback requirements. No mention was made in the letter about an office or community center being part of the proposed development.
  7. I expressed concerns about the project to Mayor Kenneth Gist, others on City Council, and the City Manager. In May of 2016, my neighbor Donna Pearson and I met with the Woodruff City Manager. At that meeting we were presented with an unsigned City of Woodruff Zoning Map and a copy of what we were told was the city zoning ordinance. I was surprised to learn that my property was shown on the map as R-2A as I was under the impression that my property was zoned R-1. The City Manager informed us that the change from R-1 to R-2A was made sometime around 2004 or 2005 but could not provide us with a more specific date or with documentation proving that the zoning change had actually occurred.
  8. I started attending City Council meetings and also helped to pay for a title search of the Property from a local attorney. Despite our best efforts were never able to obtain accurate information about the project during the summer of 2016.
  9. Prior to the effort to rezone the Property in summer of 2016, only one sign was posted regarding the planned zoning change. This sign was located along Chamblin Street,

about 20 feet from the edge of the road. There was never any signage concerning the rezoning posted on Armory Drive or along Pearson Street.

10. Throughout the entire process the City of Woodruff has given me and my neighbors the runaround, refusing to answer questions, shifting responsibility, and promising to provide zoning documentation that was never delivered.

  
Henry Kerns

SWORN to before me this 3rd day  
of January, 2017.

  
Notary Public for South Carolina  
My commission expires: June 10, 2025



**CITY OF WOODRUFF, SOUTH CAROLINA**  
**OFFICIAL ZONING ORDINANCE**



With amendments through January 25, 2010

Prepared by

The Planning Commission of the City of Woodruff  
and  
The Appalachian Council of Governments

April 25, 2005

Ordinance Number: \_\_\_\_\_

State of South Carolina  
County of Spartanburg  
City of Woodruff

**An Ordinance to Adopt**  
**The Official Zoning Ordinance**

Whereas, the City of Woodruff Zoning Ordinance requires refinements be made as necessary to maintain its effectiveness and efficiency, and

Whereas, the City of Woodruff Planning Commission has recommended that several refinements be made as a result of review by that body;

**Then, Let it Therefore Be Resolved**, by the City Council of the City of Woodruff, South Carolina, that upon review of the *City of Woodruff Zoning Ordinance*, and upon consideration of public input, the recommendation of the Planning Commission to adopt the Zoning Ordinance Update is hereby accepted, and is adopted in full force and effect within the municipal limits of the City of Woodruff.

**RESOLVED, This 25<sup>th</sup> Day of April 2005.**

\_\_\_\_\_  
Mayor, City of Woodruff

\_\_\_\_\_  
Clerk, City of Woodruff

First Reading: January 31, 2005

Public Hearing: February 28, 2005

Second Reading: April 25, 2005

---

Section IX Duties of Administrative Officials, Board of Zoning Appeals, City Council, and Courts on Matters of Appeal

It is the intent of this Ordinance that the duties of the City Council in connection with this Ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this section and this Ordinance. Under this Ordinance, the City Council shall have only the duty of considering and adopting or rejecting proposed amendments or the repeal of this Ordinance, as provided by law.

ARTICLE XIII AMENDMENTS

The regulations, restrictions, and boundaries set forth in this Ordinance may, from time to time, be amended, supplemented, changed, or repealed by the City Council, after study by the Planning Commission, and in accordance with the following procedures.

Section I Action by the Applicant

The following action shall be taken by the applicant for an amendment to this Ordinance.

1. Initiation of Amendment: Proposed changes or amendments may be initiated by the City Council, Planning Commission, and in accordance with the following procedures.
2. Application: An application for any change or amendment shall contain a description and/or statement of the present and proposed zoning regulation or district boundary to be changed, and the names and addresses of the owner or owners of the property. Such application shall be filed with the City Clerk not later than thirty (30) days prior to the Planning Commission meeting at which the application is to be considered.
3. Fee: When a proposed amendment is initiated by an individual or parties other than the City Council, Planning Commission, or Board of Zoning Appeals, a fee of thirty-five (\$35) dollars shall be paid to the City Clerk for each application for administrative expenses involved.

Section II Action by the Planning Commission

The Planning Commission shall consider and make written recommendations to the City Council concerning each proposed zoning amendment. The Planning Commission may hold separate Public hearings or may sit concurrently with the public hearing held by the City Council.

Section III Action by the City Council

1. City Council Consideration: The City Council shall consider changes and amendments to this Ordinance not more than six (6) times a year at one (1) meeting during the months of January, March, May, July, September and November. The City Council may waive this part of the Ordinance if it finds that an emergency exists by a favorable vote of three-fourths (3/4) of all the members, including the mayor.
2. Public Hearing: No amendment shall be adopted by the City Council until after public notice and hearing.
3. Notice of Hearing: Notice of a public hearing shall be published in a newspaper of general circulation, at least fifteen (15) days prior to the hearing. The notice shall be blocked in, carry an appropriate descriptive title, and shall state the time, dates, and place of the hearing. When a proposed amendment affects the district classification of property, notice shall also be made by posters the property concerned or by mailing notices to the owners of the

surrounding property. The City Council, at the close of the public hearing, may defer taking lawful action on the proposed amendment until it has sufficient time to consider any new evidence or suggestions presented at the public hearing.

4. Action by City Council: Before taking such lawful action as it may deem advisable, the City Council shall consider the recommendation of the Planning Commission on each proposed zoning amendment. If no recommendation is received from the Planning Commission within thirty (30) days from the date of the public hearing, it shall be deemed to have approved the proposed amendment. If the Planning Commission fails to recommend approval of a request for an amendment, the City Council may reject the recommendation of the Planning Commission by a favorable vote of three fourths (3/4) of all the members of the Council, including the Mayor,
5. Protests: In case of a protest against any proposed zoning change signed by the owners of twenty (20) percent or more of the lots included in the proposed change, or of those immediately adjacent to in the rear or on either side extending two hundred and fifty (250) feet, or of those directly opposite extending two hundred and fifty (250) feet from the street frontage of such opposite lots, any amendment shall not become effective except by favorable vote of a majority of all the members of the City Council, including the Mayor, No protest petition shall be valid unless it is (1) written, (2) bear the actual signature of the requisite number of property owners and states that they protest the proposed amendment, and (3) is received by the Building Inspector in time to allow at least two (2) normal working days (excluding weekends and legal holidays) prior to the public hearing on the amendment,, as to allow time for municipal personnel to check the accuracy and sufficiency of the petition.
6. Reconsideration of Request for Amendment: When the City Council shall have denied a request for an amendment, it shall not consider another request for an amendment affecting the same property until one (1) year from the date of the previous denial.

#### ARTICLE XIV PROVISION OF ORDINANCE DECLARED TO BE MINIMUM REQUIREMENTS

The provisions of this Ordinance shall be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive, or that imposing the higher standards, shall govern.

#### ARTICLE XV COMPLAINTS REGARDING VIOLATIONS

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis of the alleged violations shall be filed with the Building Inspector. He shall record properly the complaints, immediately investigate, and take action as provided by this Ordinance,

#### ARTICLE XIV SEPARABILITY

If for any reason one or more sections, sentences, clauses, or parts of this Ordinance are held unconstitutional or invalid, such decision shall not affect, impair, or invalidate the remaining provisions of this Ordinance.

#### ARTICLE XV EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after its passage and adoption.

---

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Elizabeth Earley, John Earley, Lloyd Wilkins,  
Henry Kerns, Margie Mills Kerns, Donna  
Pearson, and Bruce Pearson,

Plaintiffs,

vs.

The City of Woodruff, SC, and the Terraces at  
Woodruff, a South Carolina Limited Liability  
Company,

Defendants.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-03288

**ORDER DISMISSING THE  
COMPLAINT**

This case came before the Court on January 5, 2017, for a hearing on the motion to dismiss the Complaint filed by the defendant City of Woodruff (the City). Plaintiffs in the case challenge the rezoning of certain properties within the City, including property rezoned in 2016 that is owned by the corporate defendant (the Terraces) and on which apartments are being constructed. As pertinent to this case, S. C. Code section 6-29-760 controls the procedure for notice of zoning and rezoning by a municipality, as well as the procedure for legal challenges to zoning and rezoning.

The motion to dismiss by the City was based on Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and was made on the general ground of failure of the Complaint to state a cause of action and on specific grounds, appearing on the face of the Complaint, related to compliance with the requirements of Section 6-29-760. The specific grounds, asserted to be established by the allegations of the Complaint, are (1) a lack of standing to challenge, (2) the time-bar of Section 6-29-760(D) as to challenges to rezoning of properties in 2005, and (3) the presence of substantial compliance by the Town with the notice requirements for rezoning. After

land adjoining the subject property. The Complaint merely alleges that the Plaintiffs own property “in the immediate vicinity of Armory Drive” (Paragraph 1) or “in the neighborhood located immediately across Armory Drive from the Property.” (Paragraph 6).

General proximity is not sufficient to establish statutory standing under § 6-29-760(C). The requirement is ownership of “adjoining land.” “Adjoining” is not defined in § 6-29-760(C) but its common meanings include “touching” and “sharing a common boundary.” Black’s Law Dictionary (10th Ed. 2014). The Complaint contains no allegations that any of the Plaintiffs own property touching the Terraces property.

South Carolina cases appear to strictly construe the requirement of ownership of “adjoining land” as a requirement for standing to challenge a rezoning. See, for example, ATC South, Inc. v. Charleston County, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (“Because ATC is a non-adjoining landowner, it may not assert statutory standing.”)

The significance of the “owner of adjoining land” restriction placed on standing by Section 6-29-760(C) is illustrated by a comparison to other standing statutes in the Comprehensive Planning Act. For example, S.C. Code Section 6-29-820 (relating to appeals to circuit court from decisions of the board of zoning appeals) provides, in its subsection (A), that “[a] person who may have a substantial interest in any decision of the board of appeals” may appeal. Section 6-29-900 (relating to appeals to the circuit court from boards of architectural review) uses identical language granting statutory standing to “a person who may have a substantial interest in any decision of the board of architectural review.” These are broad statutory grants of standing for particular appeals; Section 6-29-760(C) is not a broad statutory grant of standing.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG ) IN THE COMMON PLEAS COURT

Elizabeth Earley, et al, )  
Plaintiffs, )  
-vs- ) TRANSCRIPT OF RECORD  
The City of Woodruff, et al, ) 2016-CP-42-3288  
Defendants. )  
September 25, 2017  
Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

A P P E A R A N C E S:

NATHAN A. EARLE, ESQUIRE  
Attorney for the Plaintiff

DANNY CALVERT CROWE, ESQUIRE  
TERRY F. CLARK, ESQUIRE  
Attorneys for Defendant City of Woodruff

MICHAEL ANDREW GRAHAM, ESQUIRE  
Attorney for Defendant Terraces at Woodruff, LLC

Linda D. Moffitt  
Circuit Court Reporter

1 street. No one batted an eyelash or thought to challenge  
2 standing in that case. The more recent case, again,  
3 decided right before the Comprehensive Zoning Act, Knowles  
4 vs. the City of Aiken.

5 Here we have a tract of land near the landowner's  
6 residence, is all of the information that we get from the  
7 Court as to the physical relationship of the plaintiff to  
8 the parcel whose rezoning is being questioned.

9 So, but we do have precedent. We do have precedent  
10 for -- for allowing people situated in the place of -- in a  
11 similar situation as my clients being -- being allowed to  
12 challenge zoning decisions.

13 I further wanted to bring to the Court's attention the  
14 language of the City of Woodruff's own zoning ordinance.  
15 I've got an excerpt from it here, an excerpt from the  
16 official Woodruff zoning ordinance with amendments through  
17 January 25, 2010. This was attached as an exhibit to our  
18 motion to reconsider.

19 But I was just going to ask the Court to consider the  
20 justice of reading the state statute 6-29-760, which  
21 requires you to be an adjoining landowner in conjunction  
22 with the City of Woodruff's own zoning ordinance, which in  
23 two separate places recognizes that people who are not --  
24 whose properties aren't immediately abutting the property  
25 in question may have a legitimate interest to challenge a

1 zoning decision or at least have a right to know what's  
2 going on.

3 And so on page 107 of the zoning ordinance under  
4 Section Three, Subparagraph Three, notice of hearing,  
5 the -- the city is required to mail notices to the owners  
6 of the surrounding property.

7 Okay. Now, what does surrounding property mean? I  
8 don't know. I do know that one -- I think two of my  
9 clients received such notices in connection with this  
10 project.

11 Now, demonstrating that such notices were received was  
12 one of the points of attaching the affidavits to this  
13 motion.

14 I understand that the Court did not want to consider  
15 the substance of affidavits, but I am asking the Court to  
16 consider those affidavits for the limited purpose of  
17 establishing the physical -- the -- the physical proximity  
18 of my clients to -- to this property and also showing that  
19 as far as the City of Woodruff was concerned they are  
20 owners of surrounding property.

21 Then paragraph five below that on page 108 under the  
22 heading of protests, there is a procedure whereby the  
23 owners of 20 percent or more of lots included in the  
24 proposed change or of those -- there's the language --  
25 immediately adjacent to, in the rear or on either side

1 extending 250 feet or those directly opposite extending  
2 250 feet from the street frontage of such opposite lots, et  
3 cetera, et cetera, et criteria.

4 So this is -- this is the criteria -- this is the  
5 class of individuals who in the City of Woodruff's own  
6 ordinance have a recognized, sort of a heightened, interest  
7 in what is going on in this property that is so close to  
8 them.

9 So I am also asking the court to consider those  
10 affidavits for the -- for the limited purpose of  
11 establishing that some of my clients do, in fact, live  
12 within this 250-foot -- 250-foot range from the property.

13 The court finally -- the court also places a lot of  
14 stock in the ATC case, the ATC vs. Charleston case -- in  
15 finding that -- that you have to be an adjoining landowner,  
16 meaning that your property actually has to touch the  
17 property in question in order to have standing. But I  
18 would just like to suggest that the ATC court actually  
19 merely established sort of an outer limit.

20 The plaintiff in that case owned a cell tower lot that  
21 was a mile away from the property they were complaining  
22 about.

23 The court also was concerned that that particular  
24 plaintiff was a commercial competitor. And one other just  
25 side note on the ATC case, the ATC court considered the

1 statutory standing, constitutional standing. And -- and  
2 public importance exception standing all is separate  
3 categories, separate bases for establishing standing.

4 So, again, I would just like to suggest that I don't  
5 think the legislature intended to create a situation where  
6 literally no neighbors to a rezoned piece of property would  
7 have standing to challenge a wrong -- a wrongful zoning  
8 decision.

9 One other point, and then I will be finished,  
10 concerning the affidavits, because I know that Mr. --  
11 Mr. Crowe is upset about that.

12 I have a case, and actually somehow I came away with  
13 only two copies of this. I'm going to hand this to  
14 opposing counsel first.

15 This is Baird vs. Charleston County, 1999 Supreme  
16 Court decision. And the reason I am bringing this to the  
17 Court's attention is the language on the top of page 529 in  
18 the South Carolina Reporter. The Court is addressing this  
19 question of the propriety of considering affidavits at a  
20 12(b)(6) hearing.

21 And, you know, obviously, one of the parties in this  
22 case was complaining that the Court considered affidavits,  
23 converted the 12(b)(6) motion hearing to a summary judgment  
24 hearing without adequate notice to the opposing party.

25 But I wanted to -- I wanted to suggest that -- that it

1 is not inappropriate for the Court -- and may, in fact, be  
2 the fair and proper thing for the Court to do -- to  
3 consider affidavits for the limited purpose of dealing with  
4 these sort of quasi jurisdictional questions such as  
5 standing.

6 So I just wanted to read a little bit from the top of  
7 page 529. Again, the South Carolina Reporter in Baird vs.  
8 Charleston County.

9 "Nevertheless, affidavits and other evidence outside  
10 the pleadings may, in certain circumstances, be considered  
11 in support of a motion to dismiss based on lack of  
12 jurisdiction."

13 And I'm skipping a few lines here.

14 "The Court may consider affidavits or other evidence  
15 proving lack of jurisdiction."

16 And of course I believe the flip side of that  
17 statement would also be true that the Court could also  
18 consider affidavits establishing jurisdiction.

19 "However, the presentation of such evidence does not  
20 convert the motion to dismiss into one for summary  
21 judgment."

22 And so I would just -- I would just like to suggest  
23 that it especially in a context, the way this standing  
24 issue was raised, it was raised in a motion to dismiss.  
25 And so I believe that in fairness to my clients they should

1 be permitted to establish their physical proximity to this  
2 project so that the standing question can be fully and  
3 fairly evaluated by the Court.

4 So for those reasons we would ask the Court to  
5 reconsider its order dismissing the complaint, to  
6 reinstitute the -- both causes of action and allow us to  
7 proceed with discovery. Thank you, Judge.

8 THE COURT: Mr. Crowe.

9 MR. CROWE: Your Honor, Danny Crowe for the City of  
10 Woodruff. With me is Terry Clark, also representing the  
11 City of Woodruff, and Michael Graham representing the  
12 corporate defendant Terraces at Woodruff, the apartment  
13 complex.

14 Your Honor, both sets of defendants filed written  
15 returns to plaintiff's motion to reconsider, which we would  
16 urge that the Court consider. And we would each reiterate  
17 our grounds in those.

18 Your Honor, the plaintiff's motion to reconsider  
19 reveals no errors in the Court's order filed on May 24 and  
20 reveals no basis for alteration or amendment of the order.

21 The Court in its order appropriately addressed the  
22 matters that were appropriately argued and raised at the  
23 hearing and in the memoranda of the parties.

24 Additionally, the plaintiffs by this motion attempt to  
25 introduce new matter that was not before the Court at the

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2016-CP-42-03288

Elizabeth Earley, John Earley,  
Lloyd Wilkins, Henry Kerns,  
Margie Mills Kerns, Donna  
Pearson, and Bruce Pearson,

Appellant,

v.

The City of Woodruff, SC,  
and the Terraces at Woodruff, a  
South Carolina Limited Liability  
Company,

Respondent.

**RECEIVED**  
JAN 11 2018  
SC Court of Appeals


CERTIFICATE OF SERVICE

The Appellants' Return to Respondent City of Woodruff's Motion to Exclude Matter from the Record on Appeal in the above-referenced matter was served upon the following parties on January 10, 2018, via first class U.S. mail.

Danny C. Crowe  
Crowe LaFave, LLC  
Post Office Box 1149  
Columbia, South Carolina 29202

Terry F. Clark  
City of Woodruff  
Post Office Box 1389  
Woodruff, South Carolina 29388

Michael A. Graham  
THE LAW OFFICES OF MICHAEL A. GRAHAM, LLC  
Post Office Box 433  
Columbia, South Carolina 29202

  
\_\_\_\_\_  
Nathan A. Earle



Nathan A. Earle

Attorney at Law | Certified Mediator

1541 Wade Hampton Blvd., Suite E  
Greenville, SC 29609

(864) 915-5228

NATHANEARLE@UPSTATELEGAL.NET

January 10, 2018

Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**  
JAN 11 2018  
SC Court of Appeals

RE: Earley, et al. v. City of Woodruff, et al.  
Case # 2017-002095

Dear Ms. Kitchings:

Please find enclosed the original and seven copies of the Appellants' Return to Motion to Exclude Matter from the Record on Appeal in the above-referenced matter, with certificate of service. Please return one file-stamped copy in the enclosed envelope.

I can be reached at (864) 915-5228 with any questions about this filing.

Sincerely,

Nathan A. Earle