

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

Brian L. Boger, Special Referee

Appellate Case No. 2018-000450

Trenholm Building Co., Respondent,

v.

Rajarithnam S. Aluri, Trustee,
The Aluri Family Trust, UTD May 3, 2012, Petitioner.

RESPONDENT'S RETURN
TO PETITION FOR REHEARING

FACTS

Lot 650 and Lot 660 are adjacent to one another on Pickens Street in Columbia, between Greene Street and Blossom Street. A four-unit apartment building sits on each lot. The address of petitioner's Lot 650 is 616 Pickens Street. The address of respondent's Lot 660 is 618 Pickens Street.

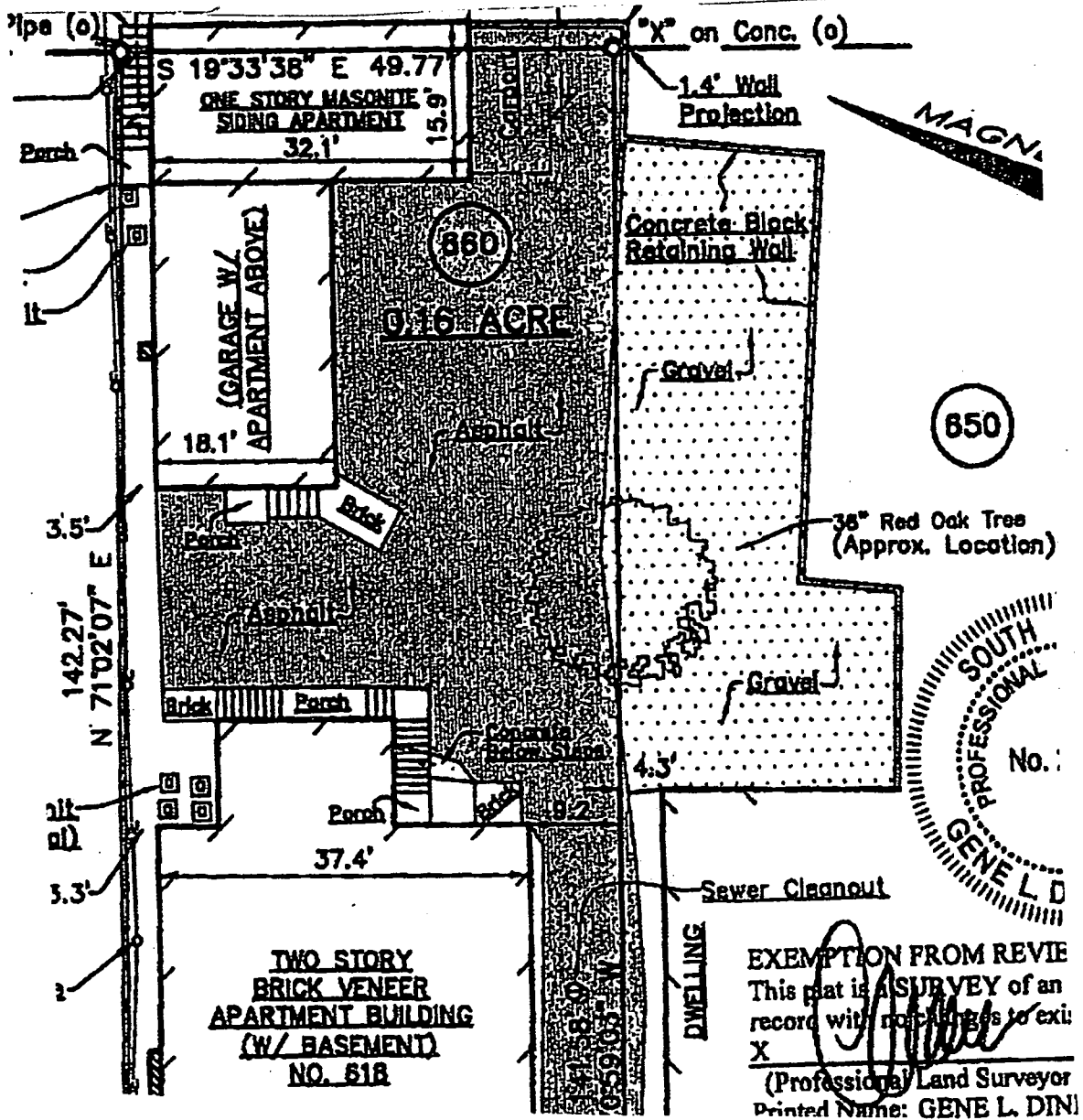
The six parking spots in back of respondent's 618 Pickens are reached by respondent's driveway on Lot 660. The four or five parking spots belonging to petitioner's 616 Pickens are reached by a municipal alleyway bordering the south side of Lot 650.¹

Today, a retaining wall running east to west roughly bisects the back yard of

¹ See plat dated 9/29/76, Def. Exh. 3, R. 75.

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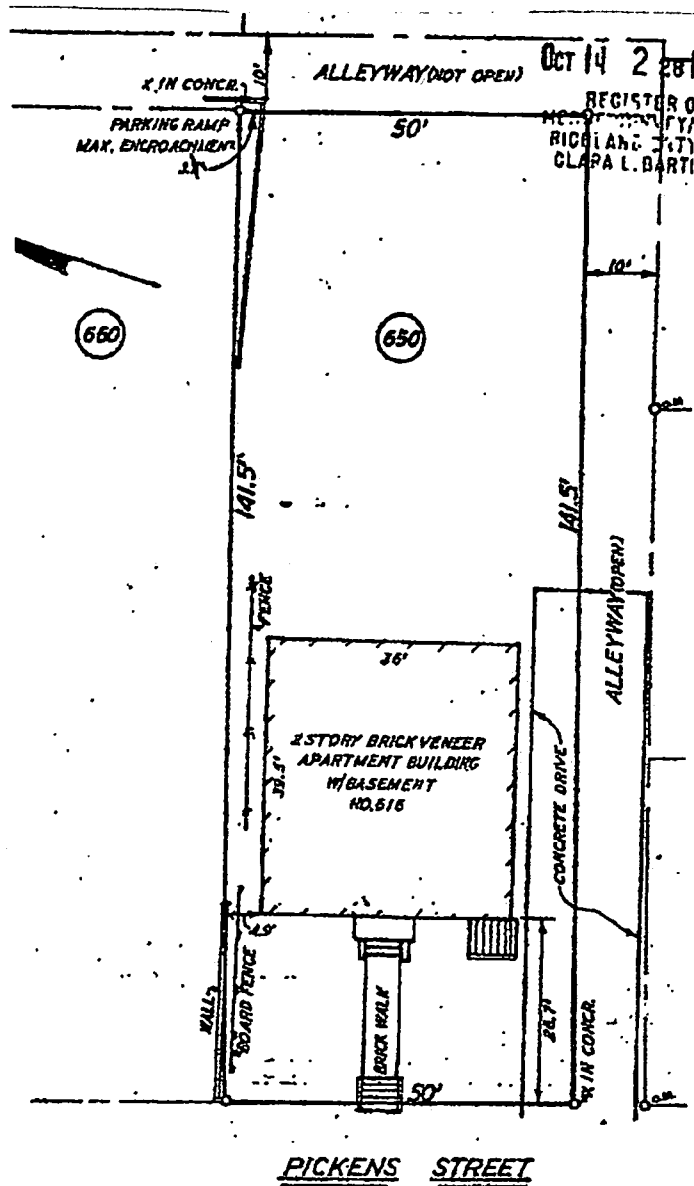
petitioner's Lot 650.²



Portion of Plaintiff's Exhibit 1 [R. 60]
"Concrete Block Retaining Wall"

² The retaining wall is seen in a photograph, Def. Exh. 1, R. 62. The photo looks north, showing petitioner's retaining wall and the parking area behind his building. [R. 15/14-25.]

This retaining wall did not exist when Lot 650 was surveyed in 1976.



Portion of 1976 Plat [R. 75]

In accordance with good surveying practice, the 1976 plat of Lot 650 shows the location of a wall, a board fence, and a fence remnant. If the retaining wall existed, it would have been shown.

There is no evidence of when the wall was built. The petitioner's principal, Dr. Aluri, could not recall whether he himself built the wall after buying Lot 650 in 2003.³ [R. 56/20-57/1.]

It is this retaining wall which divides the back yard of petitioner's 616 Pickens Street in two, making the northern half inaccessible to vehicular use except via the respondent's driveway on Lot 660. Until the retaining wall was built, the entire back yard of Lot 650 (616 Pickens Street) was accessible via the municipal alleyway on the south side of the property. [Photograph, R. 65.] At some unknown time after 1976, the owner of Lot 650 must have decided to level the southern half of the back yard and to construct the retaining wall, at the cost of rendering the northern half inaccessible for vehicular use.⁴

As noted, the four or five parking spots on petitioner's Lot 650 are found on the south side of the wall, accessible by the alleyway. This south side of the back yard is three or four feet lower than the north side. In order for the north side to be converted into additional parking area accessible from the alleyway, it would be necessary to remove the retaining wall and to excavate something like 170 yards of dirt so as to level the northern half with the southern half. Petitioner offered no evidence of the cost of that work. The petitioner's principal, Dr. Aluri, testified vaguely that it would still be unsatisfactory if the whole back yard were restored to access via the alleyway on the south. On the contrary, the entire back yard would be level throughout its area, usable for parking or anything else.

According to the testimony of Mr. Miller, respondent's manager of its apartments

³ Construction of the retaining wall would have been only the final step in the larger project of excavating and leveling the southern half of the back yard.

⁴ Assuming that the original slope of Lot 650's back yard from north to south was more or less even, the soil excavated from the southern half was probably dumped on the northern half, making each of the two halves level but a few feet different in elevation.

at 618 Pickens, no use of 618's driveway was being made by anyone associated with the petitioner when Mr. Miller's management began, about six years before trial.

[R. 12/21–23; R. 14/5–9.] The circuit court credited that testimony. [Order, p. 6, last three lines, R. 7.] In this law case, that finding is supported by evidence and is final.

Beginning several years before trial, Dr. Aluri began authorizing various people to use the northern half of the back yard of his 616 Pickens for parking. This area could only be reached via respondent's driveway on 618 Pickens. At various times the petitioner authorized friends, employees, a member of his family, and invitees attending functions at his hall to park in this area [R. 55/16–56/3], reached only by 618's driveway. This resulted in friction leading finally to this action, in which respondent sought a declaration that the petitioner had no right to the use of 618's driveway.

The court of common pleas found that the petitioner has no easement by necessity to use the driveway.

ARGUMENT

The circuit court's finding of no easement by necessity is amply supported.

In the face of the finding of no easement, it is the petitioner's burden to prove that the existence of an implied easement by necessity is the *only* reasonable conclusion to be drawn from the evidence. *Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism*, 377 S.C. 86, 659 S.E.2d 151, 154 (2008); *Jowers v. Hornsby*, 292 S.C. 549, 551-52, 357 S.E.2d 710 (1987).

An easement by necessity arises, if at all, when severance occurs. That happened here in 1998. There is no evidence that the retaining wall existed then. The entire back yard of Lot 650 could have been accessible to vehicles in 1998, as it was in 1976. It was the excavation of the southern half of the lot and its separation from the northern half by a retaining wall at some unknown time which rendered the northern half inaccessible to vehicles. The owner who claims an easement by necessity cannot

himself create the necessity. *Boyd v. BellSouth Tel. & Tel. Co.*, 359 S.C. 209, 213, 597 S.E.2d 161 (Ct. App. 2004) (*rev'd in part on other grds.*, *Boyd v. BellSouth Tel. & Tel. Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006)).

Dr. Aluri acknowledged that access to the area in question in the rear of his property could be achieved by excavation but the work would be expensive.⁵ However, he offered no engineering evidence, no contractor evidence—no evidence of any kind—concerning what the undertaking would require or what its expense might be. The reasonableness of such an expense could only be judged in relation to the value of the property, and there is no evidence of that either.

It is impossible to say that “there could be no other reasonable mode of enjoying [616 Pickens Street],” *Boyd, id.*, without use of the driveway next door.

Moreover, the petitioner does not seek access to the back yard of his apartment building primarily—if at all—for the use of the apartment building itself. The petitioner seeks to double the number of parking spots behind his building to support a use unrelated to Lot 650. He seeks it for the use of his friends, his employees, a member of his family, and invitees attending functions at his hall. [R. 55/16–56/3.] These uses are unrelated to the alleged dominant tenement — Lot 650. A use unrelated to the severed property could never give birth to an easement by necessity.

* * * * *

In the context of modern urban conveyancing, it would be extraordinary for experienced conveyancers on both sides of the 1998 closing which resulted in severance to leave to implication such an important matter as a driveway easement, to

⁵ Q: You could excavate it and put up another retaining wall and have full use of that area, correct?

A: It can be possibly done, but it's not an easy job. It's an expensive job.

R. 47/24–48/3.

be fought over in court decades later. Such an oversight would border on malpractice if an easement were, in fact, contemplated. The far more reasonable inference is that no such easement was needed or intended.

CONCLUSION

There is no evidence of an easement implied by necessity. Much less is the existence of such an easement the only reasonable conclusion to be drawn.

Respectfully submitted,

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June 18, 2020.

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CERTIFICATE OF SERVICE

I certify that I served a copy of respondent's return to appellant's petition for rehearing upon the attorney for the appellant, Allen Jackson Barnes, Esq., by first class mail, postage prepaid, addressed to him at his address of record, namely:

Allen Jackson Barnes, Esq.
Attorney at Law
Post Office Box 2838
Sumter, SC 29251

on June 18, 2020.

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June 18, 2020.

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Honorable Jenny A. Kitchings
Clerk of the S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Trenholm Building v. Aluri
Appellate Case No. 2018-000450

Dear Ms. Kitchings:

Enclosed for filing is respondent's return to the petition for rehearing.

Thanking you, I remain

Yours very truly,


James B. Richardson, Jr.

cc: Allen Jackson Barnes, Esq.
Carlos W. Gibbons, Esq.