1983

Craig M. Chambers and Linda C. Chambers v. Smithfield City And Robert Richardson : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

CRAIG M. CHAMBERS and LINDA C. CHAMBERS, Plaintiffs/Appellants,	)	
vs.	)	Supreme Court No. 19252
SMITHFIELD CITY and ROBERT RICHARDSON, Defendants/Respondents.	)	

BRIEF OF APPELLANT

* * * * *

Appeal from the Judgment of the First District Court of Cache County

* * * * *

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TABLE OF CONTENTS

CASES AND AUTHORITIES CITED

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BRIEF OF APPELLANT

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NATURE OF THE CASE

This is an action by Plaintiffs as agrieved parties for the plenary review of Defendant Smithfield City's decision granting Defendant Robert Richardson's variance request.

DISPOSITION IN LOWER COURT

The trial court denied Plaintiffs' motion for summary judgment and granted Defendants' motions for summary judgment, approving the variance and the procedure by which it was granted.

NATURE OF RELIEF SOUGHT ON APPEAL

Plaintiffs/Appellants (hereinafter "Plaintiffs") seek a reversal of the lower court's summary judgment and remand with directions for entry of judgment in Plaintiffs' favor.

STATEMENT OF FACTS

1. Sometime prior to March of 1982, Defendant/Respondent Robert Richardson (hereinafter "Richardson") purchased a .67 acre lot located at approximately 380 South 200 West in Smithfield, Utah. Record p. 15 (hereinafter Record is denoted "R.").

2. Prior to Richardson's purchase, the .67 acre lot was part of a one acre lot (R. 50). The prior owner divided the acre by selling the north .67 acre to Richardson (R. 47, 53

3. The lot sold to Richardson (hereinafter "the property") was and is located in an RE-1 zone, which requires a minimum area of one acre for building (R. 1, [illegible]). The property is "restricted," (R. 20, 47, 50), in that a residence was already located on the balance of the original one acre lot when the subject .67 acre property was sold to Richardson (R. 46).

4. At the time Richardson purchased the property, he was aware of the one acre minimum building requirement imposed by the RE-1 zone (R. 54).

5. The RE-1 zone is a "buffer" zone between residential and agricultural zones (R. 40, 45, 53). The RE-1 zone allows for residential use (with one acre minimum lot required) and some animal use (R. 54).

6. On March 11, 1982, Richardson proposed to Defendant Smithfield City (hereinafter "the City") that the property be rezoned from the RE-1 zone to an RE-1-12 zone to allow for construction of a single family dwelling (R. 15, 78). Hearing on the application was held March 17, 1983 (R. 45), and on April 7, 1982, Richardson withdrew his rezone application at the City's instruction (R. 47, 53). All of these proceedings were before the City's Planning and Zoning Commission (hereinafter "the Zoning Commission").

7. On April 15, 1982, Richardson applied to the City's Board of Adjustments (hereinafter "the Board") for a variance which would allow him to build a residence on the property (R. 15, 16).

On May 27, 1982, the Board approved (three to one) Richardson's request (R. 16, 54).

8. On June 16, 1982, Richardson applied to the Zoning Commission for an adjustment along the same lines as the one approved by the Board of Adjustments (R. 50). The Zoning Commission unanimously voted to "recommend approval" of the application (R. 50).

9. On June 23, 1982, Richardson presented the variance application to the City Council (R. 17). After considering the actions taken by the other two administrative bodies, the City Council voted three to two to approve the variance request (R. 40).

10. The procedure followed by Richardson in obtaining approval for his variance request was required by and in compliance with the provisions in Chapter 4-2 of the Smithfield City Ordinances as amended by Ordinance 1-85 (R. 17).

11. All of the findings made by the Board, the Commission or the Council are contained in a "Findings of Fact" printed sheet with notations, which is found in the record at pages 57 and 85.

ARGUMENT

I. THE CITY HAD NO AUTHORITY TO GRANT THE VARIANCE.

The threshold and primary substantive issue presented by this appeal is whether the board of adjustments was within its authority in approving Richardson's variance request. For purposes of this point only, Plaintiffs treat the board of adjustments as having made the variance decision (See Point II below). If, as Plaintiffs claim and will show, the Board had no power to grant the variance, then the trial court erred in upholding

the variance and its summary judgment should be reversed by this Court.

The powers of Municipal boards of adjustment are define in Section 10-9-12, Utah Code Annotated. Subsection 10-9-12(3) gives the board power to authorize variances only upon compliance with specified conditions.

> "The board of adjustments shall have the following powers:. . .
>
> (3) To authorize upon appeal such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done. Before any variance may be authorized, however, it shall be shown that:
>
> (a) The variance will not substantially affect the comprehensive plan of zoning in the City and that adherence to the strict letter of the ordinance will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.
>
> (b) Special circumstances attached to the property covered by the application which do not generally apply to the other property in the same district.
>
> (c) That because special circumstances, property covered by the application is deprived of the privileges possessed by other properties in the same district; and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district."

Section 10-9-12, U.C.A. Since the City cannot, by ordinance, expand the powers granted in the enabling statute, Section 10-9-12(3) defines the widest possible range of the board's discretion. Furthermore, the board lacks jurisdiction to grant

a variance request which fails to meet the minimum statutory requirements. See Ivancovich v. City of Tuscon Board of Adjustment, Ariz. App, 529 P.2d 242 at 247 (1975).

A deficiency in any one of the minimum requirements of the statute deprives the board of power to grant a variance. For instance, if an applicant has demonstrated that strict adherence to the ordinance will create difficulties and hardships, but he fails to show any special circumstances attached to the property, the board cannot grant his request for a variance.

In the present case, the board lacked authority to grant Richardson's request. The variance did not even meet one of the statutorily prescribed minimum tests, let alone all of them as required. There is no evidence to support the City's decision. See Points IA through IC.

The City's lack of power to grant the variance translates into clear error on the part of the trial court.

> "We hold therefore that . . .the order of the Board of Adjustment and the judgment of the District Court are both made without authority of law."

Walton v. Tracy Loan & Trust Company, 97 Utah 249, 92 P.2d 724 at 729 (1939). Plaintiffs submit that in reviewing the variance decisions of a board of adjustments, the district court should presume its decision to be "regular," and should uphold the decision of the board if there is "substantial evidence" to support it. See Banks v. Kodiak City Council, Alaska, 628 P.2d 927 (1981). The same standard has been held to apply to appellate review of the lower court's ruling on the variance.

> "In reviewing a district court's judgment, as above, this court will, in the first instance. . . .make the same review of the administrative tribunal's action as does the district court."

Stice v. Gribben-Allen Motors, Inc., Parsons, Kan., 534 P.2d 126 at 1271 (1975).

The error of the trial court was compounded by the fact that in the proceedings before the City, Richardson had the burde of showing his entitlement to a variance. Erickson v. City of Portland, Or. App., 496 P.2d 726 (1972). In a typical variance case, the burden of proof shifts from the applicant before the board to the petitioner who seeks judicial relief. But in this case, the trial court granted summary judgment in Defendants' favor. This Court must, therefore, construe the evidence in the light most favorable to Plaintiffs.

The inevitable conclusion to be drawn from the record, no matter what standard of review is employed, is that the varian should not and could not have been granted, having failed to meet one or more of the statutory requisites. The trial court's summary judgment was likewise erroneous and was premature besides

A. The Variance Violates the Spirit of the Ordinance.

The first and most important requirement the enabling act imposes on variance requests is "that the spirit of the ordinance shall be observed." Section 10-9-12(3), U.C.A. The idea that the variance cannot substantially deviate from the ordinance is also expressed in the statute as follows: the board has power to authorize "such variance from the terms of the ordinance as will not be contrary to the public interest," Section 10-9-12(3), U.C.A.; and "the variance will not sub-

stantially affect the comprehensive plan of zoning of the City," Section 10-9-12(3)(a). The statute leaves the board of adjustments powerless to grant anything other than a minor deviation from the zoning ordinance. The variance here granted constituted a significant departure from the zoning ordinance and should be struck down on this ground alone.

In Walton v. Tracy Loan & Trust Co., 97 Utah 249, 92 P.2d 724 (1939), the Utah Supreme Court declared a variance to be illegal as a substantial departure from the zoning ordinance. In the proceedings below both the Defendants and the Court distinguished the Walton case on the basis that Walton dealt with a "use variance," whereas the present case is an "area variance." Although the distinction exists, both "area" and "use" variances must meet the same statutory requirements; the statute makes no distinction between "use" and "area" variance. The proposition of Walton was that a variance in use is per se violative of the spirit of the ordinance, and as to the board of adjustments, is an ultra vires act. See Walton, 92 P.2d at 729. The basis for the holding, in part, was that the board could not, by variance, effect a rezone as zoning was a legislative function and the board was merely an administrative agency:

> "Any variance in use to the extent such land is in effect a rezoning or the placing of such land in a different zone than that in which the Commission by ordinance had placed it . . ."

Walton, P.2d at 727.

The Walton case is helpful not only because it establishes some general guidelines as to what constitutes a violation of the spirit of the ordinance, but also because in

dicta, the court outlines the kind of "minor deviations" from the ordinances that are the proper subject of a variance.

> "Can the Board then grant a variance in use or is it confined to variances in building and construction details within specified uses?. . .If, however, the powers of the Board are limited to minor and practical difficulties, to such variations in detail and construction as the Inspector himself might have allowed rather than to use, the statute and set up are harmonious throughout. .and the purpose and spirit of zoning laws preserved. . .And this interpretation of the statute is in accordance with the great weight of authority."
> (emphasis added)

Walton, 92 P.2d at 727. Variances are within the power of the Board only if they concern building and construction details which the building inspector himself might waive.

In the present case, the variance permits Richardson to build a home on two thirds of an acre, where the minimum lot size is one acre. This is not a minor "detail" which the building inspector might overlook in granting a permit. This variance violates the spirit and purpose of the ordinance by in effect downzoning the lot from an RE-1 zone to a zone in which the same uses are permitted but the minimum lot size is reduced. The RE-1 zone is classified with reference to two major criteria, use and minimum lot size. The set back and yard requirements are not made part of the classification, because these matters are details. Where the only distinction between the RE-1 zone and other zones is the minimum lot size, it cannot be said the minimum lot size is a minor "detail of construction."

Plaintiffs concedes that if the applicant had conflicting surveys with regard to lot size, or had 99 percent of an acre, a variance might not violate the spirit of the ordinance. But

here Richardson would have the board of adjustment lop off a full third of the minimum area required by the ordinance.

> "Unquestionably the requested variance from the . . .requirement that there be a lot area of not less than 6,000 square feet. . .so that this applicant might use this. . .3,000-square-foot lot for single-family dwelling purposes, would unduly and in a very marked degree conflict with that specific provision of the ordinance, and would be against the public interest as declared therein, as well as contrary to the spirit of the ordinance. . ." (emphasis added)

Brown v. Fraser, Okl., 467 P.2d 464 at 469 (1970). The elimination of one third of the lot requirement would likewise be contrary to the spirit of the ordinance. See Abel v. Zoning Board of Appeals, Conn., 374 A.2d 227 (1977).

The "findings" of the Board are not helpful with regard to determining whether the spirit of the ordinance is maintained by the variance (R. 85). As pointed out below, the "findings" are merely a checklist. Findings ld through lg pay homage to the principle of preserving the spirit of the ordinance, but there is absolutely no evidence to support those findings. The only discussion of the spirit of the ordinance with regard to this variance was the objection which was repeatedly raised on the basis that the RE-1 zone was a "buffer zone" and that the allowance of higher residential density than one home per acre violated the spirit of such a "buffer" between agricultural and residential uses (R. 40, 45, 53). The "findings" were merely self serving conclusions of the various City bodies, and as such have little bearing on the issue. This Court must look past those conclusions and must independently examine the record to see if the spirit of the ordinance was violated. See Ivancovich

v. City of Tucson Board of Adjustment, Ariz., App. 529 P.2d 242 (1975). The record discloses that the variance conflicts with the expressed intent of the ordinance.

That the spirit of the ordinance has been violated by the variance is demonstrated not only by the variance as compared to the ordinance, but also by the way in which the variance was approved. The record clearly reflects that the variance was employed as an improper substitute for rezoning.

In Lovell v. Planning Com'n of City of Independence, Or. App., 586 P.2d 99 (1978), the Court struck down a variance which would have allowed construction on an area "less than the minimums specified for this R-1 single family residence zone." The Board had found that "(T)he degree of variance in this case is a reasonable amount of square footage for proper building." Lovell, 586 P.2d at 100. The Court implicitly found the variance to be in conflict with the zoning ordinance and directed the City's attention to the proper remedy:

> ". . .if the City believes the lot size that would be left after the proposed partitioning is sufficient for its R-1 residential areas, then it should change its zoning restrictions to reflect that belief. Variances should not be employed as a substitute for the normal legislative process of amending zoning regulations."

Lovell, 586 P.2d at 101.

In the present case, Richardson began the process of obtaining approval for construction by requesting a rezone of his lot. See Statement of Fact, paragraph 6. It is important to note that Richardson switched his approach to a variance procedure only after the City convinced him that a variance would accomplish

the same result, but with substantially less difficulty (R. 47). The City had apparently superimposed variance ("special questions") standards over certain types of rezone requests, which rendered variance requests procedurally and substantively less difficult in those "special questions" cases. This improper channelling of Richardson's rezone request into the variance procedure points out the substance of Richardson's request and the variance as granted: It constitutes a substantive amendment to the zoning ordinance as to that lot and as such is invalid. The City further revealed the rezone character of the request when the Planning and Zoning Commission stated:

> "It was felt this is a residential area and one home on .67 of an acrea was reasonable." (R. 50).

If the City felt the area was residential and that .67 of an acre was a reasonable size for a lot in that area "then it should change its zoning restrictions to reflect that belief." Lovell, 586 P.2d at 101. The variance, however, was not a proper remedy for Richardson and should be struck down. The district court erred in upholding the variance because the variance violates the public policy as expressed in the zoning ordinance.

B. There Are No Special Circumstances Attached to the Property.

Under the enabling act the subject property must be subject to special circumstances which are not generally attached to other property in the same district. Section 10-9-12(3)(b). This requirement is both indepndent and prerequisite to the "hardship" requirement. See Section 10-9-12(3)(c), U.C.A.

In this respect the variance has no basis because 1) there is no evidence of special circumstances attached to

Richardson's property and 2) there is no evidence of the difference between Richardson's property and other property in the RE-1 district. The variance is, therefore, illegal as this condition of the enabling act has not been satisfied.

In the present case, the Board unanimously found that special circumstances attach to Richardson's property (R. 85, finding 1i). Plaintiffs are at a complete loss to find from the record any evidence to support the Board's finding. The trial court likewise failed to identify any evidence that supported the Board's findings. See R. 87-89. The clear import of Section 10-9-12(3)(c), U.C.A ~~and the last of any evidence to support the Board's finding. The trial court likewise failed to identify any evidence~~ that supported the ~~Board's findings. See 10-9-12(3)(c), U.C.A.~~ and the lack of any evidence of special circumstances attached to the Richardson property obviate the necessity of further citation.

Even if Richardson had carried his burden of demonstrating some "special circumstances" attached to his property, he would not have satisfied the statutory requirement.

> "The data contained in the planning commission's report focus almost exclusively on the qualities of the property for which the variance was sought. In the absence of comparative information about surrounding properties, these data lack legal significance.
>
> . . .
>
> Thus neither an administrative agency nor a reviewing court may assume without evidentiary basis that the character of neighboring property is different from that of the land for which the variance is sought."

Topanga Ass'n For A Scenic Community v. County of Los Angeles, Cal. , 522 P.2d 12 at 21, 22. (1974) Again, the record is completely devoid of evidence of the circumstances attached to the surrounding property. It should be noted here that the substandard size of Richardson's lot is not a special circumstance within the meaning of Section 10-9-12(3)(c). The lot is no different than other substandard lots in the same zone. See Brown v. Fraser, Okl., 467 P.2d 464 at 469 (1970).

Having failed to bring forward any evidence of special circumstances of the property which distinguish it from other parcels in the same district, Richardson must be denied the variance which the City and the lower court granted him in contradiction with the statute.

C. The Variance Does Not Relieve Richardson From Any Unnecessary Difficulties and Hardships.

Under Utah law, in order for a variance to be granted, it must be shown that:

> ". . .Adherence to the strict letter of the ordinance will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan."

Section 10-9-12(3)(a), U.C.A. Subsection (3)(c) of the same section restates this basic principle in terms of the preservation of a "substantial property right." In this case, no difficulties have been shown. There is no evidence of "hardships." There is nothing in the record to support the finding that "deprivation" of property rights has resulted from special circumstances.

The applicant has the burden of showing that any

unnecessary difficulties and hardships would occur to him if the ordinance were literally enforced. Brown v. Fraser, Okl., 467 P.2d 464 (1970). In the proceedings below, Defendants argued that their burden had been met by what they claimed was proof of "practical difficulties." They urged upon the trial court the "practical difficulties" standard based on their contention that such standard is appropriate in "area variance" cases. The language of the statute, however, establishes the standard to be "difficulties and hardships," Section 10-9-12(3)(a), U.C.A., and makes no distinction between "area" and "use" variances. Given the ruling in Walton v. Tracy Loan & Trust Co., 97 Utah 249, 92 P.2d 724 (1939), that "use" variances are per se illegal as rezoning by a non-legislative body, the remaining standards of enabling statute, including "difficulties and hardships," can only apply to what Defendants characterize as "area" variances. This Court should flatly reject the "practical difficulties" standard and adopt the "unnecessary hardship" and "difficulties and hardships" standards contained in the clear language of Section 10-9-12(3), U.C.A.

Although the Board made a finding of "hardship," (See R. 85, 1h and 1j) and the court found that the land would be rendered useless without the variance (R. 83), there is no evidence of a cognizable "difficulty" or "hardship" which Richardson might suffer. The RE-1 zone permits some animal uses on the land (See Findings of Fact 5), and the land was apparently so employed prior to Richardson's purchase (R. 46). Nothing in the record suggests Richardson can't use his lot without a home on it.

The Commission and the Court apparently assumed the zoning restriction might impair or reduce the value of Richardson's lot. Although nothing contained in the record justifies this speculation, Plaintiffs will admit, for purposes of argument, that the variance would enhance the value of the lot. That fact, even if shown, would not constitute a "hardship."

> "Although we have not had prior occasion to construe our variance statute, it is of a variety commonly found in other states. A finding of unnecessary hardship or the equivalent is universally required, and the universal rule is that the financial loss or the potential financial advantage to the applicant is not the proper basis for a variance." (citations omitted).

Stice v. Gribben-Allen Motor, Inc., Parsons, Kan., 534 P. 2d 1267 at 1272 (1875). There is no evidence that lacking the variance Richardson would suffer any "difficulty" or "hardship." The trial Court therefore erred in granting summary judgment.

Plaintiffs additionally claim that even if Richardson had carried his burden of proving "unnecessary hardship," the variance would be improper under the doctrine of "self-created hardsip" ~~doctrine~~. Although this doctrine is not expressly made part of the statute, most Courts read into the variance proceedings this additional consideration. The Smithfield City ordinance apparently contemplates application of the "self-created hardship" doctrine in variance cases, as evidenced by "finding" 1k (R. 85). Defendants argued, and the trial court agreed, that the self-created hardship doctrine was inapplicable because Richardson did not "create" the hardship (R. 83). The "self-created hardship" doctrine is properly applied, however, where the alleged "hardship" is voluntarily acquired:

> "As was mentioned above, the Board denied Levy's request for a variance on the ground that Levy's hardship, if any, was "self-inflicted" in that she purchased the subject property consisting of only one and one-quarter acres, with either actual or constructive notice that existing zoning regulations required that a single family residence be built on no less than two and one-half acres.
>
> . . .
>
> Without deciding whether 'self-inflicted hardship' is in and of itself an absolute bar to the granting of a variance, it is at the very least a highly significant fact which. . .is a 'material element bearing on the issue and weighs heavily against the owner seeking the variance.'"

Levy v. Board of Adjustment of Arapehoe County, Colo., 369 P.2d (1962) 991. In the present case, the finding of the Board and the Court that the "self-created hardship" doctrine did not apply was not only unsupported by the evidence, but was directly contrary to the evidence in the record (See Finding of Fact 4).

II. THE DISTRICT COURT ERRED IN UPHOLDING THE PROCEDURE BY WHICH THE VARIANCE WAS GRANTED.

Pursuant to Smithfield City Ordinance, a variance reque is submitted for "recommendation" to the Board of Adjustments and the Planning & Zoning Commission. The ordinance purports to vest the City Council with authority to grant variances in appropriate cases after the "recommendations" have been made by the other two principal agencies (R. 25). This procedure is not allowed under Section 10-9-12, U.C.A. This Court should declare Smithfie City Ordinance 4-2-d.6 to be invalid as conflicting with the enabling statute. The Smithfield City procedure contradicts the enabling act in that it bestows upon the City Council the ultimate decision-making power with regard to variances.

Defendants and the trial court relied heavily upon Thurston v. Cache County, Utah, 626 P.2d 446 (1981) to support their view that the Smithfield procedure comports with the enabling act. Their reliance is misplaced because in Thurston this Court addressed a different enabling statute (county as opposed to city), and an entirely distinct procedure (conditional use permit as opposed to variance). Plaintiffs agree that a County may, by ordinance, reserve to its legislative body the power to grant conditional use permits. This does not mean, however, that a City may, by ordinance, reserve to its legislative body the power to grant variances.

In the present case, the enabling statute gives to the Board of Adjustments the power to grant variances. See Section 10-9-12(3). The power to grant variances is given to no other municipal body. This power is not made dependent upon the legislative body "optional" provisions for the Board's exercise of its power as was the case in Thurston. See Thurston, 626 P.2d at 445, 446. That the Board of Adjustments is the only body invested with the power to grant variances "is clear from the statutory language."

This principle is not only clear from the statute, but is implicit in the entire framework of municipal zoning.

First, the Enabling Statute requires that municipalities who wish to avail themselves of zoning powers create a Board of Adjustments. Section 10-9-6, U.C.A. If the Board were totally dependent upon municipal ordinances to determine when it had the powers ostensibly given by state law, the requirement that cities have such boards would be rendered meaningless.

Second, the zoning system established by the Enabling Act contemplates a Board of Adjustment which sits as an appellate body within the municipality. The Smithfield Ordinance creates the untenable situation where an appeal to the Board would be taken from a decision which the Board had already recommended and approved.

Third, the Smithfield Ordinance places one who seeks judicial review of a variance in a "catch 22" dilemma. Section 10-9-15, Utah Code Annotated provides for appeal from the Board's decision within 30 days. By the time the Board's decision is made final (by the City Council) it is likely the time for appeal has passed. But if judicial review is sought immediately after the Board passes on the variance, the argument might well be raised that such review is premature as the City Council could deny the variance.

Finally, Plaintiffs contend the Smithfield Ordinance as now constituted lacks adequate provisions for notice. The Defendants' and the Court's response to this contention is that Plaintiffs received actual notice of the proceedings and that their interests were represented at the administrative hearings. Although Plaintiffs agree that lack of notice may have been "cured" in this case, the deficiencies in the notice point to the ordinance's overall lack of compliance with statutory requirements.

The Smithfield ordinance creates a variance procedure which is disjointed, unnecessarily repetitive and confusing.

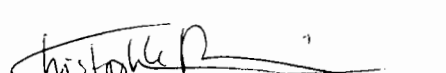
Above all, the procedure is contrary to the guidelines and zoning framework mandated by the Utah State Legislature. The ordinance should therefore be struck down by this Court, the District Court having failed to do so by its ruling on the parties' motions for summary judgment.

CONCLUSION

Smithfield City erred in granting Richardson's variance request. The variance violated the spirit of the zoning ordinance and constituted a rezoning in variance clothing. There was no showing that Richardson's property had special circumstances or that his property was any different than the surrounding property. There was no showing that Richardson suffered any hardships or difficulties before the variance was granted. The District Court erred in refusing to grant Plaintiffs' motion for summary judgment because there were no facts in the record to support Defendants' position. Likewise, the lower court erred in granting summary judgment for Defendants. Finally, the procedure employed by Smithfield City in variance cases is so contrary to the enabling statute that it must be struck down, the Thurston case notwithstanding. For all of the above reasons this Court should reverse and remand to the District Court with directions to vacate the variance.

RESPECTFULLY SUBMITTED this 26th day of September, 1983.

DAINES & SMITH



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CERTIFICATE OF DELIVERY

I hereby certify that I hand-delivered two (2) copies of the foregoing Brief of Appellant, this 26th day of September, 1983, to each of the following:

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