

VIRGINIA:

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

IN RE: MAY 4, 2023 DECISION OF THE :
BOARD OF ZONING APPEALS OF THE : Case No: CL23001266-00
TOWN OF THE PLAINS, VIRGINIA :

Necessary Parties:

ICS Financial Properties, LLC
6479 Main Street
The Plains, Virginia 20198
Appellants

ICS Financial Properties 2, LLC
4305 Fauquier Avenue
The Plains, Virginia 20198
Appellants

The Town of The Plains
P.O. Box 104
The Plains, Virginia

The Town Council of
The Town of the Plains
P.O. Box 104
The Plains, Virginia
Governing Body

6483 Main Street Property, LLC
6483 Main Street
The Plains, Virginia 20198
Affected Land Owner

The Front Porch Market
And Grill, LLC
6483 Main Street
The Plains, Virginia 20198
Affected Business

FILED AT _____ M	
GAIL H. BARB, CLERK	
BY _____ D.C.	

**PETITION TO REVIEW DECISION OF THE BOARD OF ZONING APPEALS
DETERMINATION MADE ON MAY 4, 2023**

COMES NOW, Your Petitioners, ICS Financial Properties, LLC and ICS Financial Properties 2, LLC, by Counsel, and pursuant to Virginia Code §15.2-2314, and respectfully asks this Honorable Court to review, reverse, and overturn the decision of the Board of Zoning Appeals on a vote of 3 to 2 to uphold the Town of The Plains Zoning Administrator's zoning opinion dated April 22, 2022 written by Steven Gyurisin as the Zoning Administrator for the Town of The Plains at that time, and sets forth the following specifying the grounds on which the Petitioners were aggrieved as follows:

1. The Petitioners are Virginia Limited Liability companies that own parcels of real property within the Town of The Plains, Virginia.
2. Michael Washer is the Managing Member of each of those Limited Liability Companies.
3. ICS Financial Properties, LLC leases the first floor of the building on the property to ICS Financial, Inc., with Michael Washer as the President.
4. Michael and Melissa Washer live on the second floor as their residence.
5. 6483 Main Street, LLC owns a parcel of land in the Town of The Plains, Virginia that is directly adjacent to ICS Financial Properties, LLC (the building where ICS Financial, Inc. is located and the Washers reside).
6. 6483 Main Street, LLC leases its property to the Front Porch and Grill, LLC as a restaurant.
7. All properties listed above, the Town of The Plains, The Town Council of the Town of The Plains, and the Board of Zoning Appeals are situated in Fauquier County, Virginia thereby conferring jurisdiction upon this Honorable Court.
8. On January 27, 2022, Counsel for the Petitioners, wrote the Town of The Plains Zoning Administrator seeking an official Zoning Administrator's Opinion asking the following, "I request that as the designated Zoning Administrator for the Town of The Plains, you provide an official Zoning Administrator's Opinion regarding the permissible use of the Front Porch as a commercial entity given the lack of requisite

parking as outlined in the code of The Plains. Further, I request that you provide a Zoning Administrator's Opinion as to whether the Front Porch is a commercial entity subject to §18-1-8, or is a commercial store selling directly to the public under §18-1-7 as under §18-1-7 the required parking would be 8.488 spaces. (See Exhibit A attached hereto and made a part hereof)

9. The contents and citations of Exhibit A are incorporated herein by reference as though fully expressed in this Petition.
10. On April 22, 2022, Mr. Steven Gyurisin responded with a Zoning Administrator's Opinion stating in pertinent part, "As the appointed Zoning Administrator and Subdivision Administrator, I have determined the Front Porch Market and Grill is subject to the conditions of an approved SUP for a restaurant use. (See Exhibit B attached hereto and made a part hereof)
11. In Mr. Gyurisin's Official Zoning Administrator's Opinion he cites the SUP dated March 16, 2015 as the rationale for permitting the restaurant use at that location.
12. Specifically, however, the SUP states in condition #2, "The applicant and owner shall provide off-street parking as required for the restaurant. Any off-street parking agreements shall be provided to the Zoning Administrator."
13. Mr. Gyurisin specifically states as follows essentially stating that he cannot make accurate square footage calculations of the interior of the building and therefore cannot determine the true square footage.
14. Mr. Gyurisin further states that the calculations would have been made under a previous town ordinance and therefore is a non-conforming use.
15. Mr. Gyurisin failed to review the previous town ordinances as they actually increased the required off-street parking.
16. Mr. Gyurisin failed to review the building applications submitted to the County that showed the actual square footage that the owners intended to build out.
17. Mr. Gyurisin failed to require a site-plan be submitted to show the square footage as major structural changes were submitted to the County and the Town Architectural

Review Board when a deck was to be built thereby expanding the existing square footage and restaurant use of the building.

18. Mr. Gyurisin failed to authorize a waiver of a site plan of the new additions and structural changes.
19. Mr. Gyurisin knew that he had failed to do these required items and specifically knew that he was in the wrong in asserting these reasons in his Official Zoning Opinion as he had required a subsequent restaurant owner with approximately 1/3 of the size of the Front Porch Market and Grill to have FIFTEEN parking spaces directly across the parking lot and inside of the building owned by ICS Financial Properties 2, LLC and owned by an African American business owner.
20. Mr. Gyurisin's deliberate treatment of a minority business owner that was very different from a white business owner caused the minority business owner eight months delay in opening.
21. Mr. Gyurisin's arbitrary and capricious, or deliberate, requirement of one business owner to have zero parking in direct conflict with the Town's zoning ordinances and yet require an African American business owner significantly smaller than the Front Porch to have fifteen is egregious at best and shows malice in his zoning letter opinion against the Petitioners.
22. In further contradiction to Condition #2 of the SUP the Town of The Plains never received any off-street parking agreements as required.
23. A Freedom of Information Act request asking for any agreement associated with the SUP was not found by the Clerk of the town.
24. Even if the parking agreement had been submitted to the town in compliance with Condition #2, it would only show two parking spaces. (See Exhibit C attached hereto and made a part hereof)
25. The last page of Exhibit C shows the only two parking spaces that the Front Porch is permitted to use pursuant to the private parking agreement.
26. The Petitioners appealed the Zoning Administrator's Opinion pursuant to Virginia Code §15.2-2311 and submitted a letter in support of the form provided by the

Town of The Plains laying out the arguments associated with how Mr. Gyurisin was wrong in his Opinion letter. (See Exhibit D attached hereto and made a part hereof)

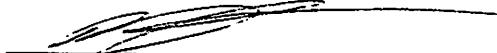
27. All of the arguments in the letter in Exhibit D are hereby incorporated in their entirety in this Petition to this Honorable Court as if stated herein.
28. Counsel for the Front Porch submitted its own letter in opposition to the appeal.
29. In response, Petitioners filed a last letter in support of its appeal with exhibits attached. (See Exhibit E attached hereto and made a part hereof)
30. All of the arguments in the letter and exhibits of Exhibit E are hereby incorporated in their entirety in this Petition to this Honorable Court as if stated herein.
31. On April 6, 2023 the Town of The Plains Board of Zoning Appeals, after a long delay due to the resignation of Mr. Gyurisin and the Town Attorney, heard arguments by Counsel for the Petitioners and the Front Porch.
32. The BZA closed the meeting and continued the matter until May 4, 2023 for a decision.
33. On May 4, 2023 the BZA reopened its meeting and went into closed session.
34. At that meeting upon re-entering open session, the BZA voted to uphold the Zoning Administrator's Opinion letter by a vote of 3 to 2 without any discussion or reasoning other than to say that Appellants (here Petitioners) did not meet their burden of proof to overturn it.
35. Counsel submits that the lengthy arguments set forth in the attached Exhibits exhaustively show that the ordinances were not followed (old or new), and that the Front Porch has operated illegally since 2015 in violation of the SUP Condition #2 without requisite parking, all while other minority owned businesses have been held to a higher standard and required to have significantly more parking spaces.

WHEREFORE, Your Petitioners pray that this Honorable Court overturn the Board of Zoning Appeals decision to uphold the April 21, 2022 Zoning Administrator's Opinion as the vote was done in an arbitrary and capricious manner without discussion. Further, that this Honorable Court void the occupancy permit authorizing the Front Porch to remain in business as it has operated illegally in violation of Condition #2 of the 2015 SUP and remain closed until the

Front Porch meets the requirements of said Condition #2. Further, that it should be overturned in that the Opinion letter was based upon false statements, false facts, and false information. Further, upon information and belief, the decision by the Board of Zoning Appeals was based upon political bias rather than the law. Further, the Zoning Administrator's Opinion and actions subsequent thereto was based upon malicious intent and with malice aforethought as was the vote by the Board of Zoning Appeals who knew that subsequent minority owned businesses were held to a higher standard than the Front Porch owners. And finally, the Petitioners pray that this Honorable Court hold the Town of the Plains accountable for their malicious actions by requiring that they pay for Petitioners' reasonable attorney's fees, costs, and any other remedy this Honorable Court deems appropriate.

Respectfully submitted by:
ICS Properties, LLC
ICS Properties 2, LLC

By Counsel



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