

**SUPREME COURT OF MISSISSIPPI**  
**Court of Appeals of the state of Mississippi**

NO. 2007-CP-1518

Consolidated with 2007-CP-1516

JAMES E. PRUITT AND KARLOTTA PRUITT-APPELLANTS

VS.

THE ZONING BOARD OF THE CITY OF LAUREL, MS-  
PLANNING COMMISSION.  
APPELLEE

AND

THE CITY COUNCIL OF LAUREL, MS.- APPELLEE

APPEAL

BREIF FOR THE APPELLANT

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622 S. Magnolia Street  
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601-326-2025

ORAL ARGUMENT IS NOT REQUESTED

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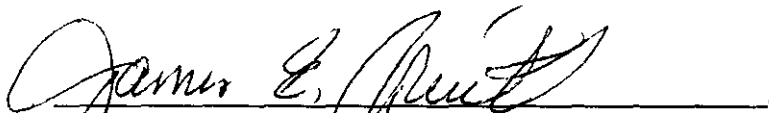
AND

THE CITY COUNCIL OF LAUREL, MS.- APPELLEE

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Appeals may evaluate possible disqualification or recusal.

James E. Pruitt, Pro-Se – Pro Se Attorney for James and Karlotta Pruitt

  
James E. Pruitt -Pro Se

David Ratcliff Attorney for The Zoning Board of the City of Laurel, MS  
Planning Commission

David Ratcliff Attorney for the City Council of Laurel, MS.

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## **ISSUES**

**1) Was the** Laurel, Mississippi City Clerk 's office denying the privilege license for package Beer Retailer in the City of Laurel because of the Little Angels Day Care Center corroborated to the extent indicated in the Laurel City Ordinance no 1372-2000, section 3-31, subsection (b) (2), sufficient to provide a basis for denial?

of section 37-13-91 of the State of Mississippi Supreme Court code of 1972, as annotated and amended item "E"?

**2) Was the** Laurel, Mississippi City Clerk 's office denying the privilege license for package Beer Retailer in the City of Laurel because of the Little Angels Day Care Center corroborated to the extent indicated in the section 37-13-91 of the State of Mississippi Supreme Court code of 1972, as annotated and amended item "E"

**3) Did the** Zoning Board of the City of Laurel, MS Planning Commission act in error since the Laurel City Ordinance 803.05.02 only give the Commission jurisdiction to conduct public hearing and make decisions for Privilege License that is under four hundred (400) feet from a church or school?

**4) Did the** Zoning Board of the City of Laurel, MS Planning Commission erred by not accepting the report from the City Building Inspector as proof

Appellant 's property was over 400 feet from Daycare Center located at 1603 Susie B Ruffin Ave?

**5) Since Little Angels** Day Care is not a school as defined by Mississippi Supreme Court code 37-13-91 as annotated and amended items "E" and "F" , did the Zoning Board of the City of Laurel, MS Planning Commission of the City of Laurel, MS Planning Commission have jurisdiction to **require** the Appellant to request a Variance?

**6) Since Little Angels** Day Care is not a school as defined by Mississippi Supreme Court code 37-13-91 as annotated and amended items "E" and "F" , did the Zoning Board of the City of Laurel, MS Planning Commission have jurisdiction to grant a variance to the Appellant ?

**7) After the** Zoning Board of the City of Laurel, MS Planning Commission conducted the public hearing and denied the variance petition, was the City Council of Laurel, MS, excluded from conducting a public hearing?

**8) Did the** City Council of Laurel, MS President followed the law by not providing a signed Bill of Exceptions when requested by the Appellant on July 11, 2007 in accordance to Uniform (UCCR) rule #5.05 ?

**9) Did, the** Judge Billy Joe Landrum, of the Circuit Court of Jones County, Mississippi 2<sup>nd</sup> Judicial District, ruling, not to hear the appeal, is corroborated to the extent that the Zoning Board of the City of Laurel, MS

Planning Commission did not follow the law of the Mississippi Supreme Court, by not applying the City of Laurel Ordinance No 1372-2000 ?

**10) Did the Judge Billy Joe Landrum** erred in his analysis that the Zoning Board of the City of Laurel, MS Planning Commission did not act capriciously and arbitrary made the wrong decision in denying the Variance petition?

**11) Did the Judge Billy Joe Landrum** erred in his analysis that the City Council of Laurel, MS did not act capriciously and arbitrarily and made the wrong decision to not to hear the appeal from the Zoning Board of the City of Laurel, MS Planning Commission ?

**12) Did the Judge Billy Joe Landrum** analysis of upholding the Zoning Board of the City of Laurel, MS Planning Commission decision , justifying a finding of dismissed with prejudice as governed by 11-51-75 , 1972 of the Supreme Court rule , failure to meet filing time limit?

### **STATEMENT OF THE CASE**

The Appellants James and Karlotta Pruitt were **required** to request a Variance petition from the City of Laurel Zoning Board of the City of Laurel, MS Planning Commission for a Beer permit for their Commercial Business located at 1503 Susie B Ruffin Ave. .

On June 14, 2007 , a hearing was placed on the Zoning Board of the City of Laurel, MS Planning Commission agenda for a request of a Variance for a business license pursuant to Ordinance no 1372-2000, dealing with the sale and/or consumption of beer and or light wine.

The request for a Variance beer license was denied as the reason was that the Appellant did not submit proof that the Commercial Business was not over 400 feet from a school.

An appeal was filed with the Laurel City Council of Laurel, MS .

On July 3, 2007 the Appeal hearing was denied.

The Appeal was filed with the Circuit Court of Jones County.

The Appeal was not heard in that court.

This issue now comes before the Mississippi Supreme Court for its ruling .

### **STATEMENT OF FACTS**

According to the Zoning Board of the City of Laurel, MS Planning Commission the Variance petition was denied due to Appellant place of business located at 1503 Susie B . Ruffin was not over 400 feet from a school known as The Little Angels Daycare Center, A/K/A Little Angels Developmental Center. Pre-School Division located at 1603 Susie B Ruffin Ave. Appellant owned a food service and wanted to add the sale of packaged Beer and Wine .



The City Building Inspector was sent out to measure the distance from Little Angels Day Care located 1603 Susie B Ruffin to the Plaintiff's Commercial Business location at 1503 Susie B Ruffin Ave.

The results of the inspection was presented to the City of Laurel Clerk To prove Appellant's property was over 400 feet from the Daycare Center., so that the Appellant may request a Beer and light wine Privilege License..

The request was denied and the Appellant was **required** to submit a Variance The City Building Inspector was sent out to measure the distance from Little Angels Day Care located 1603 Susie B Ruffin to the Plaintiff's Commercial Business location at 1503 Susie B Ruffin Ave.

The results of the inspection was presented to the City of Laurel Clerk To prove Appellant's property was over 400 feet from the Daycare Center., so that the Appellant may request a Beer and light wine Privilege License..

The request was denied and the Appellant was **required** to submit a Variance License.

Appellant filed a Variance Permit Application in accordance to City Ordinance No. 1203-1993,3-31,3-16-93 (C) . (Ordinance C)

Involving Ordinance No. 1372-2000, section 3-31, subsection (b) (2) which states:that no privilege license shall be granted for the sale and/or consumption of beer and/or light wine "when the nearest part of the

structural premises is located within four hundred (400) feet of a church or school”(exhibit B)

The definition of a school is governed exclusively by the following rules

**1) Section 37-13-91 of the State of Mississippi Supreme Court code of 1972, as annotated and amended item “E” School which states:**

*School- mean any public school in this state or non public school in this state is in session each school year for at least one hundred eighty (180) school days, except that the “nonpublic” school term shall be the number of days each school shall require for promotion from grade to grade” (rule A)*

**2) Mississippi Supreme Court Code of 1972 section 37-13-91 item “F”**

**Compulsory- school aged Child states:**

*A child who has attained or will attain the age of six (6) years on or before September 1 of the calendar year and who has not attained the age of seventeen (17) years on or before September 1 of the calendar year; and shall include any child who has attained or will attain the age of five (5) years on or before September 1 and has enrolled in a full-day public school kindergarten program. Provided, however, that the parent or guardian of any child enrolled in a full day public school kindergarten program shall be allowed to disenroll the child*

*from the program on a one-time basis, and such child shall not be deemed a compulsory school-age child until the child attains the age of six (6) years.(Rule A )*

*3) Mississippi Supreme Court Code of 1972 section 37-21-6 Mississippi Early Childhood Education Program states:*

*The Mississippi Childhood Education Program shall be the kindergarten program implemented by local school districts under the minimum education program (Rule B)*

Laurel Zoning Ordinance, 803.06.01 gives Jurisdiction to the Zoning Board of the City of Laurel, MS Planning Commission to conduct the public hearings and make decisions on any requested Variance that is **under** (400) four hundred feet (exhibit E)

The Appellant requested the Variance License in accordance to Laurel City Ordinance # 1203-1993,3-31,( C ) (exhibit C)

The structural premise is on lot 9 which is 402 ft from the business location. (exhibit A )

The owner also owns the lot next to the Daycare center, the Appellant was told a ruling from the Zoning Board of the City of Laurel, MS Planning Commission would be needed.

On June 14, 2007, a hearing was placed on the Zoning Board of the City of Laurel, MS Planning Commission agenda requesting a Variance for a business License according to Ordinance #1203-1993,3-16-93,(C) (2) The request was denied. (exhibit C)

An appeal was filed with the Laurel City Council of Laurel, MS ..

On July 3, 2007 the Appeal hearing was denied.

**On July 11, 2007 a request for a Bill** of Exceptions was requested by the appellant to the City Council of Laurel, MS President in accordance to Uniform Rules of Circuit And County Court Practice (UCCCR P) Rule #.5.05. (Rule E)

That request was refused .

**13)** On July 11, 2007 Appellant filed an original timely appeal with record into the Circuit Court office. In accordance to the **MISSISSIPPI RULES OF APPELLATE PROCEDURES adopted effective Jan 1,1995 Rule #1** states Trial court practice is governed by the Mississippi Rules of Civil Procedure, Mississippi Rules of Evidence, **applicable uniform rules**, and local rules where adopted pursuant to M.R.C.P. 83. (Rule C)

The term "trial court" in these rules includes a circuit or chancery court sitting as an appellate court And in accordance to the **UNIFORM**

## **RULES OF CIRCUIT AND COUNTY COURT PRACTICE**

**Adopted Effective May 1, 1995 Rule 5.04 states:**

**The party desiring to appeal with the Circuit Clerk, --In all appeals—The notice of appeal and payment of cost must be simultaneously filed and paid thirty (30) days of the entry of the order or judgment being appeal.**( Rule D)

**14) On August 30, 2007** Judge Landrum determined he was not going to hear the case , and stated he was going to uphold the ruling of the Commission, however, the actual order on file is not upholding the commission finding but a Dismiss with prejudice pursuant to Mississippi Supreme Court 11-51-75.

### **SUMMARY OF THE ARGUMENT**

The Appellant will present evidence that Little Angels Daycare Center, A/K/A Little Angels Developmental Center Pre-School Division is not a school.

The Appellant will present evidence that the Commercial Business is over 400 feet from the Day Care Center.

It will be proven that the City of Laurel License Department was in violation of the Laurel City Ordinance no 1372-2000 section 3-31,

subsection (b) (2). when it did not provide the Appellant a Beer license (exh B).

It will be proven that the City of Laurel License Department was in violation of the Laurel City Ordinance no 1203-1993,3-16-93 subsection (C) when it required the Appellant to apply for a Distance Variance Permit to sell beer and light wine.(Ordinance B).

Appellant will also prove The Zoning Board of the City of Laurel, MS Planning Commission did not have jurisdiction to conduct a public hearing on this case.

It will be shown that the Judge Billie Joe Landrum erred in his decision not to hear the case.

### **ARGUMENT**

The Appellant, James E. Pruitt was denied a Privilege License to sell beer and light wines because of the Little Angel Day Care Center. The Laurel, MS. City Ordinance prohibits the Sale of beer and light wine within four hundred (400) feet of a church or school.

The Commercial Business located at 1503 Susie B. Ruffin Avenue is zoned C-3 Heavy Commercial District. The Appellant sold food at the establishment and wanted to sell packaged beer. A beer license was granted by the Mississippi State Tax Commission to the Appellant to sell packaged

beer. The appellants went to the Laurel City Clerk's office and applied for a Privilege License for Package Beer Retailer in the City of Laurel, and was denied because Little Angels Daycare Center located at 1603 Susie B Ruffin allegedly was less than 400 feet from the Commercial Business.

The City of Laurel sent their City Inspector Mr. Daniel Hayes - Building Inspector out to measure the distance from lot 9 where the "structural premise" is located to the Appellant's Commercial Business. Additionally the Daycare center is on lot 9 with a fence separating the Daycare Center area from lots 10 and 11 (Exhibit A). Mr. Hayes is a paid City employee, paid with the tax dollars of the people of the City of Laurel for his experience and expertise. Mr. Hayes is one of the head Inspectors that go out and site property owners for various property violations and report his findings to the City Council of Laurel, MS at their monthly public meetings. He is well respected in his profession. His report determined the distance from Little Angels Daycare Center lot 9 to the Appellant's Commercial Business was **402 feet.** (exhibit A)

The Appellant met the measurement criteria as established by the Laurel City Ordinance No 1372-2000, 3-31 (b), (2). (exh B)

The owner of the Little Angels Daycare Center is Angela Carmichael. She is the wife of the 4<sup>th</sup> Ward City Council of Laurel, MS., Mr. George

Carmichael. Mr. Carmichael had the City Building Inspector to perform an additional measurement from lot 11 which is owned by the Carmichael's and is next to the Little Angels Daycare center but is not currently used by the Little Angels Daycare Center for any type of Daycare Center activities .

When *that* measurement was taken it was less than 400 feet from the Appellant's Commercial Business...

Appellant's proved with the letter from the City Inspector that the Commercial business location is over 400 feet from the Daycare Center and therefore should have been granted a Beer license. (Exhibit A)

Little Angels a/k/a Little Angels Developmental Pre-School , is not a school according to the Mississippi State Supreme Court code of 1972. The rules of a school are clearly stated and are governed by :

**1) section 37-13-91 of the State of Mississippi Supreme Court code of 1972, as annotated and amended item "E" School** which states:

*School- mean any public school in this state or non public school in this state is in session each school year for at least one hundred eighty (180) school days, except that the "nonpublic" school term shall be the number of days each school shall require for promotion from grade to grade" (Rule A)*



2) Mississippi Supreme Court Code of 1972 section 37-13-91 item "F"

**Compulsory- school aged Child states:**

*A child who has attained or will attain the age of six (6) years on or before September 1 of the calendar year and who has not attained the age of seventeen (17) years on or before September 1 of the calendar year; and shall include any child who has attained or will attain the age of five (5) years on or before September 1 and has enrolled in a full-day public school kindergarten program. Provided, however, that the parent or guardian of any child enrolled in a full day public school kindergarten program shall be allowed to disenroll the child from the program on a one-time basis, and such child shall not be deemed a compulsory school-age child until the child attains the age of six (6) years.(Rule A)*

3) Mississippi Supreme Court Code of 1972 section 37-21-6 Mississippi Early Childhood Education Program states:

*The Mississippi Childhood Education Program shall be the kindergarten program implemented by local school districts under the minimum education program (Rule B)*

Little Angels is a Pre-school for children under age 6 year olds and is not governed by Compulsory-school-age laws of the state OF Mississippi. .

Pre-schools are not considered in the above Mississippi Supreme court codes 1972, section 37-21-6, Kindergarten Program as annotated and amended.

Pre schools are also known as playgroups or playschools. Mostly open for a few hours a day, these are meant to provide young children with a place to play close to their homes. Pre schools usually cater for 3-5 year olds. They are ideal for children due to start school, and are not regulated by the Compulsory school aged children mandated by the state of Mississippi.

Pre-school/ learning centers, Developmental Centers benefits , apart from learning how to socializes with other children , the child will benefit by acquiring skills useful for a good start in school.

**Nora Davis School** is the only school in proximity to the Commercial Business location 1503 Susie B. Ruffin , and is over 400 Ft from this Business location.

Therefore, Little Angels should not be used in the distance requirement that is governed by the Ordinance # 1372-2000,3-31(b) (2) adopted by the City of Laurel 1985 for church or school. (exh B)

The Zoning Board of the City of Laurel, MS Planning Commission acted in error, they did not have jurisdiction over the request for Privilege License

Laurel Zoning Ordinance, 803..06.01 gives Jurisdiction to the Commission to conduct the public hearings and make decisions on any requested Variance that is under (400) four hundred feet or /and over (100) one hundred feet to a church or school only.(exhibit E)

Since Little Angels is not a school as defined by the Mississippi State Supreme Court codes, the Zoning Board of the City of Laurel, MS Planning Commission and the City Clerk erred in requiring the Appellant to request a Zoning Variance permit in accordance to the City of Laurel Ordinance No 803.06.01 (exhibit E)

Since Little Angels is not a school as defined by the Mississippi State Supreme Court codes, the Zoning Board of the City of Laurel, MS Planning Commission ,

It is out of the jurisdiction of the Commission to grant a Variance according to the City of Laurel Ordinance No 803.06.01. (Exhibit E)

The Zoning Board of the City of Laurel , MS Planning Commission did not review the written report by the City Building Inspector (Exhibit A) submitted to them by the Appellants. They merely took a vote to deny the petition stating a reason that the property was not over 400 feet from the Daycare Center.

The City Council of Laurel, MS , refused to hear the case which was in violation of section **803.05.02.** (exh D) to hear and decide appeals, since there was an error on the part of the Zoning Board of the City of Laurel, MS Planning Commission not to consider the letter of the Laurel City Inspector to prove that the Appellant's property was over 400 feet from the Daycare Center. . Therefore the City Council of Laurel, MS did not justify the reason for denial of hearing the appeal.

The City Council of Laurel, MS did not apply the Laurel City Ordinance No 1372-2000, section 3-31, subsection (b) (2) for distance requirement prior to making their decision not to hear the appeal.

The Appeal , fee and record was submitted within the 30 days as allowed in accordance to Uniform Rules of Circuit and County Court Practice (URCCP) 5.05.

The City Council of Laurel, MS president refused to sign a Bill of Exception and submit it to the Circuit Clerk therefore the record was submitted by the Appellant.

The Judge Billy Joe Landrum stated that as an appellate judge in this case, that the only thing he can rule on is if whether or not mistakes were made by the Zoning Board of the City of Laurel, MS Planning Commission and the City Council of Laurel, MS arbitrarily made the wrong decision and didn't

follow the law, and that he didn't see that. However, Judge Landrum erred in this analysis. The Zoning Board of the City of Laurel, MS Planning Commission did not follow the law. The Zoning Board of the City of Laurel, MS Planning Commission did not review or take into consideration the report filed by the City of Laurel Building Inspector's report that showed the Appellant's Commercial Business was in fact over 400 feet from the Daycare Center. (Exhibit A)

The Judge Billy Joe Landrum erred in his analysis to not review the case regarding no mistakes were made by the City Council of Laurel, MS Here the City Council of Laurel, MS should have heard the case because errors were made with the Zoning Board of the City of Laurel, MS Planning Commission as they did not apply the proof that the Appellant's property was over 400 feet from the Daycare Center therefore violating the Laurel City Ordinance No. 1372-2000, section 3-31, subsection (b) (2) for dist Thereby the City of Laurel acted arbitrarily and capriciously in making a wrong decision to hear the Appeal so that they may apply the City of Laurel inspection report to verify if the Commercial Property met the criteria of over 400 feet as required by the Laurel City Ordinance No 1372-2000 section 3-31, subsection (b) (2)..

The Appellants has proved that the Laurel City Ordinance No 1372-2000 section 3-31, subsection (b) (2) has been met and satisfied the Appellant's Commercial Business is over 400 feet from the Daycare Center.

The Judge Billy Joe Landrum erred in his analysis to not review the case regarding no mistakes were made by the City Council of Laurel, MS . Here the City Council of Laurel, MS should have heard the case because errors were made with the Zoning Board of the City of Laurel, MS Planning Commission.

That Little Angels Daycare Center is not a school in accordance to the Mississippi Supreme Court code of 1972 as annotated and amended section 37-13-91 (E), section 37-13-91 (F) and section 37-21-6 .

Thereby the City Council of Laurel, MS acted arbitrarily and capriciously in making a wrong decision to not hear the Appeal so that they may apply the Mississippi Supreme Court codes to determine that a Daycare Center is not a school.

Thereby concluding that since the Little Angels Daycare Center a/k/a/ Little Angels Developmental Center Pre-School Division does not qualify as a school as defined by the Mississippi Supreme Court that the hearing should not have been scheduled and the Beer privilege license should have been granted by the City Council of Laurel, MS .

The Appellant has proved that the Commercial Business is over 400 feet from the Little Angels Daycare Center with the City of Laurel Building Inspection

The Appellant has proved that the Zoning Board of the City of Laurel, MS Planning Commission, was negligent in their decision to deny the Variance Petition as they did not consider the Mississippi Supreme Court codes of 1972 section 37-13-91 (e), section 37-13-91 (f) and section 37-21-6 That Little Angels does not meet the criteria of a school and therefore a hearing for a Variance Permit was not required for a beer permit.

The Appellant has proved that the City Council of Laurel, MS was negligent in not hearing the appeal.

The Appellant has proved that the Judge Billie Joe Landrum was negligent when he did not hear the case when filed to the Circuit Court.

### **CONCLUSION**

FOR THE REASONS, the Appellants, James E. and Karlotta Pruitt, prays:

- 1) That this Supreme Court determine that the Zoning Board Committee and the City Council of Laurel, MS did not comply with the Laurel City Ordinance 1372-2000, section 3-31, subsection (b)(2) rules for distance requirements for Beer privilege Licenses. (exh B

2) That this Supreme Court determine that the Zoning Board of the City of Laurel, MS Planning Commission violated Mississippi Supreme Court codes 37-13-91 (E), section 37-13-91 (F) and section 37-21-6 that Little Angels Daycare Center a/k/a Little Angels Developmental Center Pre-school Division does not meet the criteria for a school.

3) That this Supreme Court determine that the City Council of Laurel, MS . violated Mississippi Supreme Court codes 37-13-91 (E), section 37-13-91 (F) and section 37-21-6 that Little Angels Daycare Center a/k/a Little Angels Developmental Center Pre-school Division does not meet the criteria for a school.

4) That this Supreme Court determine that Judge Billy Joe Landrum erred in his decision , that the Zoning Board of the City of Laurel, MS Planning Commission acted arbitrarily and capriciously in making a wrong decision to deny the Variance Petition.

5) That this Supreme Court determine that Judge Billy Joe Landrum erred in his decision , that the City Council of Laurel, MS acted arbitrarily and capriciously in making a wrong decision to deny hearing the Appeal. .



- 6) Declare that Little Angels Daycare Center, a/k/a Little Angels Developmental Center Pre-School Division is not a school and therefore should not be used to determine footage for a Beer privilege license.
- 7) Grant the Appellants the Beer Privilege License.
- 8) Any other relief by the statute, and grant any other relief this court deems equitable and proper.

I, James E., Appellant state for he and his wife Karlotta Pruitt, Appellant, in  
the above complaint that I stated in the manner all parties are familiar with.

---

James E. and Karlotta Pruitt / Appellants

**James E. Pruitt /Pro-Se**

622 S. Magnolia Street  
Laurel, MS 39440  
601-326-2025

## CERTIFICATE OF SERVICE

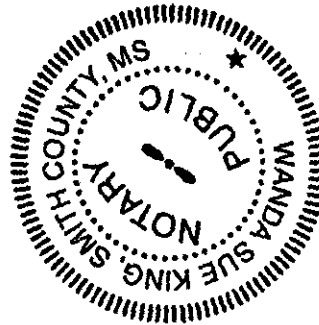
The undersigned, have been first duly sworn on oath, deposes and states that he served the Supreme Court Brief and Mandatory Excerpt to David Ratcliff -Appellee Attorney by hand delivery on January 3, 2008.

  
James E. Pruitt

Signed and Sworn to before me  
This 3 day of Jan, 2007. 2008

Wanda Sue King

MY COMMISSION EXPIRES JAN 14, 2012



## **EXHIBITS**

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Mississippi Supreme Court Code #37-13-91 "F" .....	G
Mississippi Supreme Court Code #37-21-6 .....	H

Date 4-10-2007

Susan Norman:

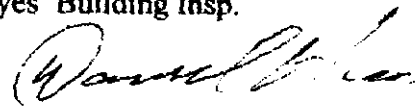
At the Request Of Mr. Pruitt I measured a distance from a point that he Claimed was the property line of his property to a point that he claimed was the property line of Lot 9 Of the property belonging to George Carmichael on 1600 blk of Suzzie B, Puffin Ave. The distance was 402 ft.

The distance between Mr. Pruitt's property and the property line of lot 11 or Mr Carmichaels property is approximately 320 feet I explained these measurement in no way implied that there was sufficient distance to allow for sales of alcohol on his property. Because points of beginning and ending were mere Speculation. Referencing the maps that we have the distance Between lot 9 And Mr. Pruitts Property are as follows Lot 10 -50.22 ft. lot 11- 50.22 ft lot 12-, 50.22 16<sup>th</sup> St. R-O-W- 50ft Lot 13-66.77ft lot 14 -66.77 ft And Alley 7.5 ft for a total of 341.70 I cannot Attest to the accuracy of these maps.

I also measured a distance from the fence line of Mr Pruitts property to the back side of the sidewalk in front of Nora Davis School. The distance was 401 ft.

I again told Mr Pruitt that the measurments did not validate an acceptable separation Because Points of Beginning and ending Were Speculation. I deny any statement that insinuates I support Or Have Validated Mr Pruitt Position Of compliance. I declare This as a true statement

Daniel Hayes Building Insp.



exh b.7 "A"

Source: Ordinance No. 1203-1993, § 3-30, 3-16-93

- (d) No license will be issued to any establishment located outside of commercially zoned areas, which are described in Appendix I of the Laurel Code of Ordinances.

Source: Ordinance No. 1373-2000, §3-30(d), 8-8-00

### Section 3-31. Required.

- (a) It shall be unlawful for any person to engage in the business of the retail or on-premise consumption sale of beer and/or light wine without having first applied for and obtained from the City of Laurel a privilege license to engage in such business.

Source: Ordinance No. 1372-2000, §3-31(a), 8-8-00

- (b) No privilege license for the sale and/or consumption of beer and/or light wine shall be issued by the City of Laurel under the following conditions:

Source: Ordinance No. 1372-2000, §3-31(b), 8-8-00

- (1) When the premises are part of a homestead, dwelling, board or rooming house, or where the same premises are used wholly or in part as sleeping quarters except a properly licensed hotel or motel.

- (2) When the nearest part of the structural premises is located within four hundred (400) feet of a church or school. There are excepted from this requirement of this Ordinance, the following:

Source: Ordinance No. 1372-2000, §3-31(b)(2), 8-8-00

- (i) a properly licensed business establishment may continue the sale of beer and/or light wine if a church or school is built nearer than four hundred (400) feet to said place of business and said business establishment complies with the other requirements of this Ordinance; or

## CODE

*Source: Ordinance No. 1372-2000, §3-31(b)(2)(i), 8-8-00*

- (ii) a business establishment that holds a valid permit or license issued prior to the passage of this Ordinance on March 16, 1993; or
- (iii) a restaurant or café business which otherwise qualifies for an On-Premises Retailers License hereunder located on property that is zones commercial and located in the Central Business District, in which event the premises of said business establishment shall be at least one hundred (100) feet from the premises of a school or a church.

*Source: Ordinance No. 1203-1993, § 3-31, 3-16-93; Ordinance No. 1302-1997, §3-31.(b), 9-16-97*

- (c) A business may apply for a variance of the distance limitations set forth in Subsection (b)(2) above, not to go below one hundred (100) feet, by submitting an Application for Variance obtained from the Inspection Department and pursuant to the procedures prescribed in the City of Laurel's Zoning Ordinance, Appendix I, Article VIII, Section 803.06

- (1) A determination on an application for variance shall be made in accordance with Appendix I, Article VIII, Section 803.06 of the Laurel Code of Ordinances.
- (2) While it is not binding on the reviewing authority, consideration will be given to statements of the non-opposition executed by any church or school that may be affected by the granting of a variance. Said statement should be submitted with the Variance Application.

*Source: Ordinance No. 1372-2000, §3-31(c)(1), (2), 8-8-00*

### **Section 3-32. Application---Filing and Contents Generally.**

- (a) Any person desiring to sell beer and/or light wine at retail and/or for on-premises consumption, or desiring to renew such a license shall file an application with the City Clerk in the form of a sworn statement giving his address, the name of his business, its location and, if a partnership, firm or association, the name and address of each partner or member and, if a corporation, the names of two (2)

given by the Planning Commission must be brought before the City Council for final approval at the next scheduled Council meeting. No order or finding of the Commission shall become effective until the eighth day following the posting of a copy of such ruling or finding, duly attested by the Superintendent of Inspection, upon a public bulletin board in the City Hall and transmittal of duplicate copies to the City Clerk.

#### **803.04 Appeal**

Appeal to the Commission and/or the City Council may be taken within 30 days after an order becomes effective by any person or persons aggrieved or by any officer, department, board, or bureau of the City of Laurel, Mississippi, affected by any decision of the Inspection Department.

#### **803.05 Jurisdiction**

The Commission shall have the following duties and responsibilities:

- 803.05.01** To conduct the public hearings on and to make written recommendations to the City Council on any proposed amendments to this Zoning Ordinance. This does not preclude the City Council having the right to conduct a public hearing for amending said ordinance.
- 803.05.02** To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this Ordinance.
- 803.05.03** To conduct the public hearings on and to make decisions on any requested variance from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship and so that the spirit of the Ordinance shall be observed and substantial justice done.
- 803.05.04** To conduct the public hearings on and to make recommendations to the City Council on applications for conditional use permits. Such recommendations shall include requisite findings as are required by this ordinance.

- 803.05.05 To conduct a public hearing and to make rulings for the advice of the Superintendent of Inspection in cases where uses are found to exist which are not specifically mentioned in this Ordinance, and to specify the zones in which such new uses may properly fall, until such time as such uses shall be specifically treated by amendment to this Ordinance. It is the intention of the Council in adopting this Ordinance that all uses of land, performance standards and requirements as to the placement and sizes of buildings specifically treated in this Ordinance are so designated to conform with a comprehensive plan within the meaning of the Mississippi Code as amended, and any changes in the application of this Ordinance which would have the effect of changing any zoning classification of any parcel of property, other than through application of specific provisions of this Ordinance, are deemed to be a legislative determination and to fall within the province of the Council.
- 803.05.06 Such other duties and responsibilities as are specifically enumerated in other Articles of this Ordinance.
- 803.05.07 There are no listed exceptions which the Commission or the City Council are empowered to make.

+ 803.06 Finding, Variance

The Commission's written recommendation on a variance shall include its findings on the following determinations:

- + 803.06.01 That the requested variance falls within the jurisdiction of the Commission.
- 803.06.02 That required notice has been given.
- 803.06.03 That the grant of the appeal would not have the effect of changing the intended zoning of the property.
- 803.06.04 That the property cannot reasonably be used in conformity with the provisions of this Ordinance.



**MISSISSIPPI RULES OF APPELLATE  
PROCEDURE**

**Adopted Effective January 1, 1995**

**APPLICABILITY OF RULES**

**RULE 1. SCOPE OF RULES**

These rules govern procedure in appeals to the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, and proceedings on petitions for writs or other relief which the Supreme Court or the Court of Appeals or a justice of the Supreme Court or judge of the Court of Appeals is empowered to grant. When these rules provide for the making of a motion in the trial court, the procedure for making such motion shall be in accordance with the practice of the trial court.

Trial court practice is governed by the Mississippi Rules of Civil Procedure, Mississippi Rules of Evidence, applicable uniform rules, and local rules where adopted pursuant to M.R.C.P. 83. The term "trial court" in these rules includes a circuit or chancery court sitting as an appellate court. Rule 46(b) concerning the admission of foreign attorneys governs admission in trial courts, in administrative agencies, and in the appellate courts.

1995.1.1

**§ 37-13-91. Compulsory school attendance requirements generally; enforcement of law.**

(1) This section shall be referred to as the "Mississippi Compulsory School Attendance Law."


(2) The following terms as used in this section are defined as follows:


(a) "Parent" means the father or mother to whom a child has been born, or the father or mother by whom a child has been legally adopted.

(b) "Guardian" means a guardian of the person of a child, other than a parent, who is legally appointed by a court of competent jurisdiction.

(c) "Custodian" means any person having the present care or custody of a child, other than a parent or guardian of the child.

(d) "School day" means not less than five (5) and not more than eight (8) hours of actual teaching in which both teachers and pupils are in regular attendance for scheduled schoolwork.

 (e) "School" means any public school in this state or any nonpublic school in this state which is in session each school year for at least one hundred eighty (180) school days, except that the "nonpublic" school term shall be the number of days that each school shall require for promotion from grade to grade.

 (f) "Compulsory-school-age child" means a child who has attained or will attain the age of six (6) years on or before September 1 of the calendar year and who has not attained the age of seventeen (17) years on or before September 1 of the calendar year; and shall include any child who has attained or will attain the age of five (5) years on or before September 1 and has enrolled in a full-day public school kindergarten program. Provided, however, that the parent or guardian of any child enrolled in a full-day public school kindergarten program shall be allowed to disenroll the child from the program on a one-time basis, and such child shall not be deemed a compulsory-school-age child until the child attains the age of six (6) years.

(g) "School attendance officer" means a person employed by the State Department of Education pursuant to

(h) "Appropriate school official" means the superintendent of the school district, or his designee, or, in the case of a nonpublic school, the principal or the headmaster.

(i) "Nonpublic school" means an institution for the teaching of children, consisting of a physical plant, whether owned or leased, including a home, instructional staff members and students, and which is in session each school year. This definition shall include, but not be limited to, private, church, parochial and home instruction programs.

(3) A parent, guardian or custodian of a compulsory-school-age child in this state shall cause the child to enroll in and attend a public school or legitimate nonpublic school for the period of time that the child is of compulsory school age, except under the following circumstances:

(a) When a compulsory-school-age child is physically, mentally or emotionally incapable of attending school as determined by the appropriate school official based upon sufficient medical documentation.

(b) When a compulsory-school-age child is enrolled in and pursuing a course of special education, remedial education or education for handicapped or physically or mentally disadvantaged children.

(c) When a compulsory-school-age child is being educated in a legitimate home instruction program.

The parent, guardian or custodian of a compulsory-school-age child described in this subsection, or the parent, guardian or custodian of a compulsory-school-age child attending any nonpublic school, or the appropriate school official for any or all children attending a nonpublic school shall complete a "certificate of enrollment" in order to facilitate the administration of this section.

The form of the certificate of enrollment shall be prepared by the Office of Compulsory School Attendance Enforcement of the State Department of Education and shall be designed to obtain the following information only:

<http://michie.com/mississippi/lnext.dll/mscode/94df/9aa4-0b22-01-1000>

**§ 37-21-6. Mississippi Early Childhood Education Program.**

The Mississippi Early Childhood Education Program shall be the kindergarten program implemented by local school districts under the minimum education program.

**Sources:** Laws, 1996, ch. 452, § 2, eff from and after July 1, 1996.

"Exh. b. 1"

**Rule 5.04**

**NOTICE OF APPEAL**

The party desiring to appeal a decision from a lower court must file a written notice of appeal with the circuit court clerk. A copy of that notice must be provided to all parties or their attorneys of record and the lower court or lower authority whose order or judgment is being appealed. A certificate of service must accompany the written notice of appeal. The court clerk may not accept a notice of appeal without a certificate of service, unless so directed by the court in writing. In all appeals, whether on the record or by trial de novo, the notice of appeal and payment of costs must be simultaneously filed and paid with the circuit court clerk within thirty (30) days of the entry of the order or judgment being appealed. The timely filing of this written notice and payment of costs will perfect the appeal. The appellant may proceed in forma pauperis upon written approval of the court acting as the appellate court. The written notice of appeal must specify the party or parties taking the appeal; must designate the judgment or order from which the appeal is taken; must state if it is on the record or an appeal de novo; and must be addressed to the appropriate court.

[Amended May 13, 1996; amended November 26, 1996.]

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**Rule 5.05**

**FILING OF RECORD IN APPEALS ON THE RECORD**

In appeals in which the appeal is solely on the record, the record from the lower court or lower authority must be filed with the court clerk within thirty (30) days of filing of the notice of appeal. Provided, however, in cases involving a transcript, the court reporter or lower authority may request an extension of time. The court, on its own motion or on application of any party, may compel the compilation and transmission of the record of proceedings. Failure to file the record with the court clerk or to request the assistance of the court in compelling the same within thirty (30) days of the filing of the written notice of appeal may be deemed an abandonment of the appeal and the court may dismiss the same with costs to the appealing party or parties.