



IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

STONERIDGE HOMES, INC., an)	
Alabama corporation and HOME)	CIVIL ACTION NUMBER
BUILDERS ASSOCIATION OF)	
ALABAMA, INC., an Alabama)	
non-profit corporation,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
THE ALABAMA STATE BOARD)	
FOR REGISTRATION OF)	
ARCHITECTS,)	
)	
Defendant.)	

NOTICE OF APPEAL AND COMPLAINT FOR DECLARATORY JUDGMENT

Stoneridge Homes, Inc., an Alabama corporation (Stoneridge), and Home Builders Association of Alabama, Inc., an Alabama non-profit corporation (HBAA), for notice of appeal and complaint for declaratory judgment, say as follows:

I. Notice of Appeal

Attached hereto and incorporated herein as Exhibit A is the Notice of Appeal that Plaintiffs have filed before The Alabama State Board for Registration of Architects appealing its decision of January 3, 2018, to the Circuit Court of Montgomery County, Alabama.

II. Complaint for Declaratory Judgment

Stoneridge and HBAA, for complaint for declaratory judgment say as follows:

A. Petitioners.

1. Stoneridge is a corporation organized and existing under the laws of the State of Alabama and is actively engaged in the business of attached and detached residential building in and about Madison and surrounding counties.

2. HBAA is a non-profit corporation organized and existing under the laws of the State of Alabama and is a trade association of approximately 7,500 members in 26 local associations in Alabama serving as an advocate for Alabama's housing industry.

B. Jurisdiction.

3. The Alabama State Board for Registration of Architects (Board) is organized and exists under and pursuant to Chapter 2 of Title 34 of the Code of Alabama.

4. Ala. Code § 34-2-39(d) grants the power and authority to the Board to make and adopt bylaws, rules, and regulations consistent with the provisions of Chapter 2 of Title 34 and pursuant to the state administrative procedure law.

5. The state administrative procedure law is contained in Chapter 22 of Title 41 of the Code of Alabama.

6. Ala. Code § 41-22-11 provides that a person who is substantially affected by a rule may petition an agency for a declaratory ruling with respect to the validity or applicability of a rule.

7. As is more particularly set out herein, Stoneridge is a person substantially affected by a rule adopted by the Board and HBAA represents its membership, including Stoneridge, who are and will be substantially affected by the rule adopted by the Board.

8. HBAA's members would otherwise have standing to maintain this complaint in their own right, the interests HBAA seeks to protect in this matter are germane to its purpose, and neither the claims asserted, nor the relief requested requires the participation of individual members.

C. Statutory Definitions and Framework.

9. An architect is a person who is legally qualified to practice architecture in Alabama. Practicing architecture is the performance or doing, or offering or attempting to do or perform any service, work, act or thing within the scope of the practice of architecture. No person is permitted to practice architecture in Alabama, or hold themselves out as such, unless in compliance with the provisions of Chapter 2 of Title 34 of the Code of Alabama.

10. Ala. Code § 34-2-32(b) contains various exemptions from the practice of architecture including the making of plans and specifications for or administering the erection, enlargement, or alteration of any single-family residence building. The services of an architect are required on all buildings unless exempted. Ala. Code § 34-2-32(c).

11. Ala. Code § 34-2-39(d) grants the power and authority to the Board to make and adopt bylaws, rules, and regulations consistent with the provisions of Chapter 2 of Title 34 and pursuant to the state administrative procedure law.

D. The Regulation.

12. Ala. Admin. Code r. 100-X-4-.10 is a regulation of the Board (the Regulation) setting out an exemption from the practice of architecture:

An architect is not required for design of a detached single-family residence, a farm building, or utility works, structure or building (provided the person performing architectural works is employed by an electric, gas, or telephone public utility regulated pursuant to Alabama law or by a corporation affiliated with such utility).

13. An administrative regulation cannot enlarge or subvert a statutory policy, but must be consistent with the statute pursuant to which it is promulgated; the provisions of a statute prevail in any case of a conflict between a statute and an agency regulation.

14. The Regulation exceeds the authority of the Board's rule and regulation making authority in that it exempts the design of only detached single-family residences while the applicable statute exempts all single-family residences.

15. Other agencies and boards of the State of Alabama have adopted rules and regulations to the effect that townhouses are considered single-family dwellings and are exempt from certain laws. *E.g.* Ala. Admin. Code r. 230-X-1-.13.

E. Substantial Effect on Petitioners.

16. Except as may be exempted from the practice of architecture, the services of a registered architect are required on all buildings and all officials of the State of Alabama, or any city, town, or county therein who are charged with the enforcement of laws, ordinances, or regulations relating to the construction or alteration of buildings are not allowed to accept or approve any plans or specifications unless prepared by a registered architect pursuant to Chapter 2 of Title 34 of the Code of Alabama.

17. Prior to the commencement of this proceeding, Stoneridge made application to the Inspection Department of the City of Huntsville for a building permit for attached townhouses which will be sold as single-family residences to various owners.

18. The Inspection Department of the City of Huntsville rejected Stoneridge's plans and specifications for the proposed townhouses because they were not prepared by a registered architect pursuant to Chapter 2 of Title 34 of the Code of Alabama.

19. Upon information and belief Stoneridge alleges that the rejection of its plans and specifications and its application for a building permit is based on the Regulation in that the plans and specifications were for attached townhouses or dwellings and not detached dwellings.

20. A townhouse is a single-family dwelling.

21. The Board has published one or more circulars stating that an architect is not required for residential plans if the building is a detached, single-family home, inferring that an attached single-family building, such as a townhouse, requires the services of an architect.

22. Stoneridge has been put to additional costs, expenses, and delays in having plans and specifications for its townhouse project prepared by a registered architect.

23. Stoneridge is in the business of erecting and constructing attached townhouses for single family occupancy and plans to submit additional applications for building permits to the City of Huntsville and other governmental subdivisions and agencies having jurisdiction over the construction and alteration of buildings.

24. HBAA and its members, including Stoneridge, will incur additional costs, expenses, and delays in connection with its future building permits and construction pursuant to such permits if it is required to have the plans and specifications prepared by a registered architect.

F. Relief Requested.

Wherefore, Stoneridge and HBAA pray that this Court will take jurisdiction of this matter and will, upon a final hearing, order, adjudge, decree, and declare the aforesaid regulation to be invalid and unenforceable. Plaintiffs pray for such other, further, and different relief to which they may be entitled.

/s/ Jesse P. Evans III

Jesse P. Evans III (EVA001)

Martin W. Evans (EVA047)

je@eefirm.com

me@eefirm.com

Attorneys for Plaintiffs

EVANS & EVANS

Renasant Place

2001 Park Place, Suite 540

Birmingham, Alabama 35203

Tel: 205.545.8085

PLEASE SERVE DEFENDANT BY CERTIFIED MAIL:

State of Alabama

Board for Registration of Architects

100 North Union Street, Suite 390

Montgomery, AL 36130-4450

BEFORE THE ALABAMA STATE BOARD FOR REGISTRATION OF ARCHITECTS

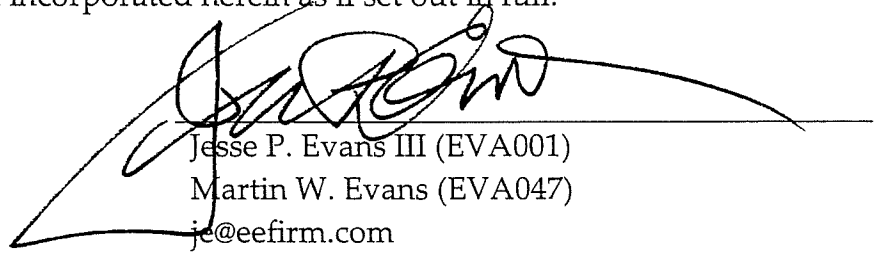
In the Matter of:

**Stoneridge Homes, Inc., an Alabama
corporation and Home Builders
Association of Alabama, Inc., an
Alabama non-profit corporation,

Petitioners**

NOTICE OF APPEAL

Pursuant to Ala. Code §41-22-20, Stoneridge Homes, Inc., an Alabama corporation (Stoneridge), and Home Builders Association of Alabama, Inc., an Alabama non-profit corporation (HBAA), appeal to the Circuit Court of Montgomery County the ruling of the Alabama State Board for Registration of Architects dated January 3, 2018, a copy of which is attached hereto and incorporated herein as if set out in full.



Jesse P. Evans III (EVA001)

Martin W. Evans (EVA047)

je@eefirm.com

me@eefirm.com

Attorneys for Plaintiffs

EVANS & EVANS

Renasant Place

2001 Park Place, Suite 540

Birmingham, Alabama 35203

Tel: 205.545.8085



SECURITY FOR COSTS

We hereby acknowledge ourselves security for costs for appeal. For the payment of tall costs secured by this undertaking, we hereby waive our right of exemption as to personal property under the Constitution and the Laws of the State of Alabama.

Executed with our seals this 30th day of January, 2018.

Filed and approved _____
(Date)

ABBA and Steneritz Homes, Inc. by their attorney
[Signature] _____ (L.S.)

Appellant-principal

[Signature] _____ (L.S.)
Jesse P. Evans III (Surety)

[Signature] _____ (L.S.)
Martin W. Evans (Surety)

Clerk



www.boa.alabama.gov

January 3, 2018

Honorable John Treadwell, Deputy Director
 Legislative Fiscal Office
 Legal Division
 Alabama State House, Suite 613
 11 South Union Street
 Montgomery, AL 36130

Re: Declaratory Ruling: Exemptions Rule 100-X-4-.10

Dear Hon. Treadwell:

This Preliminary Decision of the Board is issued in response to the attached Petition for Declaratory Ruling received by our office on November 28, 2017 (Ex. 1 - Tab 1). The Board is requesting an independent review of this Preliminary Decision and a Final Decision from the Legislative Fiscal Office.

QUESTION

Is the single family residence exemption as set forth in Alabama Board for Registration of Architects' Administrative Code Regulation 100-X-4-.10 consistent with the single family exemption set forth in Code of Alabama Section 34-3-32(b)?

FACTS, LAW AND ANALYSIS

I. BOARD HISTORY, MISSION, AND RULE MAKING AUTHORITY

The Alabama Board for Registration of Architects was established in 1931 (*hereinafter* "The Board"). The Board is charged with protecting the health, safety, and welfare of the public by registering and regulating architects. Alabama Code Section 34-2-31 declares the Board's policy and further states that the chapter shall be construed liberally to carry out the policy, which is listed below.

Architects and the practice of architecture are hereby declared to affect the public health, safety and welfare and to be subject to regulation and control

in the public interest. It is further declared to be a matter of public interest and concern that the architectural profession merit and receive the confidence of the public and that only qualified architects be permitted to practice architecture in the State of Alabama. All provisions of this chapter relating to the practice of architecture shall be liberally construed to carry out these objects and purposes.

...

Ala. Code § 34-2-31.

The Board has the authority to promulgate rules and regulations. Alabama Code Section 34-2-39(d) states "The Board shall have power and authority to make and adopt bylaws, rules and regulations consistent with the provisions of this chapter and pursuant to the state administrative procedure law in order to comply with the provisions of this chapter and to establish standards of professional conduct of architects." Ala. Code § 34-2-39(d).

II. PERTINENT STATUTE AND REGULATION IN ISSUE

Alabama Code Section 34-2-32(b) exempts certain building types from requiring the services of a registered architect. The Petition for Declaratory Ruling focuses on the exemption for "any single family residence building." Ala. Code § 34-2-32(b). This section states:

No person shall be required to register as an architect in order to make plans and specifications for or administer the erection, enlargement, or alteration of any building upon any farm for the use of any farmer, irrespective of the cost of such building, or any single family residence building or any utility works, structures, or building, provided that the person performing such architectural works is employed by an electric, gas, or telephone public utility regulated pursuant to the laws of Alabama or by a corporation affiliated with such utility or of any other type buildings which has a total area of less than 2,500 square feet provided it is not intended for use as a school, church, auditorium, or other building intended for the assembly occupancy of people. Ala. Code § 34-2-32(b) (emphasis added).

Regulation 100-X-4-.10 likewise exempts the services of a registered architect for the design of "a detached single-family residence." This regulation states:

An architect is not required for design of a detached single-family residence, a farm building, or utility works, structure or building (provided that the person performing architectural works is employed by an electric, gas, or telephone public utility regulated pursuant to Alabama law or by a

corporation affiliated with such utility). Ala. Admin. Code 100-X-4-.10. (emphasis added).

III. BOARD'S ADOPTION OF REGULATION 100-X-4-.10

On October 26, 2009, the Board filed Notice of Action with the Legislative Reference Service to put out for comment a proposed new chapter of regulations, titled "Scope of Practice." This proposed new chapter, Chapter 4, included the above regulation, which the Petitioners as of November 2017 have placed in issue.

The Board allowed for written public comments to be submitted to the Board on the proposed regulations by January 3, 2010, and the Board conducted a public hearing on the proposed regulations on February 10, 2010. The Board did not receive any comments concerning the word "detached" or the use of "detached" in the proposed regulation.

The Board adopted the new chapter with no changes to Regulation 100-X-4-.10. In its submittal to the Legislative Reference Service concerning the Board's action on the proposed regulations, the Board stated that the "Adopted new chapter will provide guidance to architects and other building professionals regarding the scope of architectural practice in Alabama" (Ex. 2 - Tab 2).

IV. AN INDEPENDENT REVIEW OF BOARD'S RULES AND REGULATIONS

In September 2015, the Board had the Code of Alabama for the Alabama Board for Registration of Architects Regulations as they relate to the Code reviewed by the Alabama Office of Regulatory Oversight of Boards and Commissions to ensure that its rules and regulations are based on clear state policy protecting the health, safety and welfare of the public and do not result in anticompetitive conduct without a significant and corresponding state interest. In the attached opinion by the then Acting Secretary, Honorable Randy Sallé, dated September 30, 2015, the office opined that:

Based upon a review of the statutory law governing architects, ALA. Code §§ 34-2-30 through 34-2-42 (1975); and the State Board for Registration of Architects Administrative Code § 100-X-1, *et. seq.*, **the undersigned does not recommend any changes to the Board's rules**. Certainly the Board will need to continue to review issues that are industry specific which may lead to rules amendments.

There is language that prohibits non-registered architects from practicing in the State of Alabama; however, the **reasons for that limitation conform to the Legislature's clearly stated policy that registration is necessary to safeguard the health, safety, and welfare of the public**. Furthermore,

registered architects are responsible for adhering to the laws and rules of the Board. Those laws and rules are clearly established in the Board's rules.

(emphasis added) (Ex. 3 - Tab 3).

V. BOARD'S MEETING ON PETITION FOR DECLARATORY RULING

As stated previously, the Board received the attached Petition on November 28, 2017. The Petitioners claim that it "has been put to additional costs, expenses, and delays in having plans and specifications for its townhouse project prepared by a registered architect." Petitioners requested that the Board take jurisdiction over the matter, set a date, and conduct a hearing, and also specifically, to issue a declaratory ruling.

Board Chair, Marzette Fisher, specially called a board meeting to address the Petition. On December 5, 2017, notice of the Board meeting was posted on the Open Meetings Website. The meeting was also posted on the Board's website on the same date. The Petitioners' counsel received and acknowledged notice of the meeting date, time, and place.

On December 20, 2017, the Board meeting was held. Board members present were Chair Marzette Fisher, Vice-Chair Mike Chapman, Dan Bennett, Courtney Brett, and Jimmy Seay. The Chair declared that a quorum was present. Also present were the attorney for the Petitioners, Jesse P. Evans, III, and Jason Reid with the Home Builders Association of Alabama. Also in attendance were State Fire Marshal Scott Pilgreen, Deputy State Fire Marshal Mark Drinkard, and Bob Herbert, Investigator for the Alabama Board of Engineers and Land Surveyors. Additionally, Board staff present were Mary Goldthwaite, Assistant Attorney General, Elizabeth Bern, Executive Director, and Debbie Whitman, Legal Research Assistant.

Chair Fisher gave the Petitioners' counsel the opportunity to present to the Board on the Petition. Comments were made by the Petitioners' counsel, Mr. Evans, concerning other agencies exempting townhomes. However, when questioned, Mr. Evans only cited one agency, the State of Alabama General Contractor's Board, that has such a provision. Ala. Admin Code 230-X-1-.13. Mr. Reid of the Home Builders Association expounded on Mr. Evan's comments. Board members discussed the relief requested by the Petitioners.

Two Board members, Mr. Bennett and Mr. Seay, were also serving on the Board in 2010 when the regulation 100-X-4-.10 was adopted. Mr. Seay explained that using the word "detached" in this regulation was added to clarify the exemption that Petitioners have placed in issue stated in Code Section 34-2-32(b). Mr. Bennett further explained that "detached" was added to avoid ambiguity.

Mrs. Brett agreed with Mr. Seay that a single family residence building is a one dwelling unit. Mrs. Brett further explained that there is a real health, safety, and welfare issue when combining residential units into multifamily arrangements.

Chair Fisher noted that relevant building codes call for a one-hour Underwriter's Laboratories' approved separation between townhome units. Considering conventional wood-frame construction details used in townhomes, a one-hour wall or floor separating units is not easily accomplished; ergo inclusion of this building type in the purview of an architect's life-safety fire-code expertise is clearly in the interest of the safety of the public.

Further, Board members discussed the fact that if "detached" was removed, then the Board interpretation would remain the same. Mr. Seay again explained that single means "one" and that if two dwellings are joined, then they become multifamily and are no longer single family.

Board members discussed that a change in the law would be necessary to grant the relief requested by the Petitioners. Board members discussed the need for the continued existence of the law and the regulation in order to protect the health, safety, and welfare of the public and to protect the citizens of the State of Alabama.

CONCLUSION

After discussion, the Board unanimously voted to make a preliminary decision that Regulation 100-X-4-.10 is consistent with Alabama Code Section 34-2-32(b) and therefore, Petitioner's request is denied; and that the Board submit this preliminary decision to the Legislative Fiscal Office for an independent review and final decision.

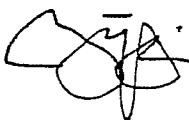
This preliminary decision is consistent with the Board's long-standing interpretation that a single family residence building is a detached single family residence, and not a multifamily dwelling unit.

Attached are the following relevant Exhibits for your review:

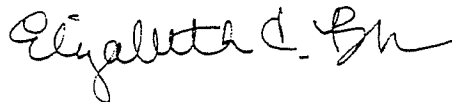
- Exhibit 1 – Petition for Declaratory Ruling
- Exhibit 2 – Board's Notice of Adoption of New Chapter filed with Legislative Ref.
- Exhibit 3 – Letter from the Alabama Office for Regulatory Oversight Commission of Boards and Commissions concerning the independent review

Should you have any questions, please contact the Board office at (334) 242-4179.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Fisher', with a stylized flourish at the end.

Mr. Marzette Fisher
Board Chair

A handwritten signature in black ink, appearing to read 'Elizabeth C. Bern', written in a cursive style.

Elizabeth C. Bern
Executive Director

Enclosures

cc: Hon. Mary Goldthwaite, Assistant Attorney General
Hon. Jesse P. Evans, III

Evans & Evans

LAWYERS

November 22, 2017

NOV 23 2017

Elizabeth C. Bern, Executive Director
State of Alabama
Board for Registration of Architects
100 North Union Street, Suite 390
Montgomery, AL 36130-4450

Re: Petition for Declaratory Ruling

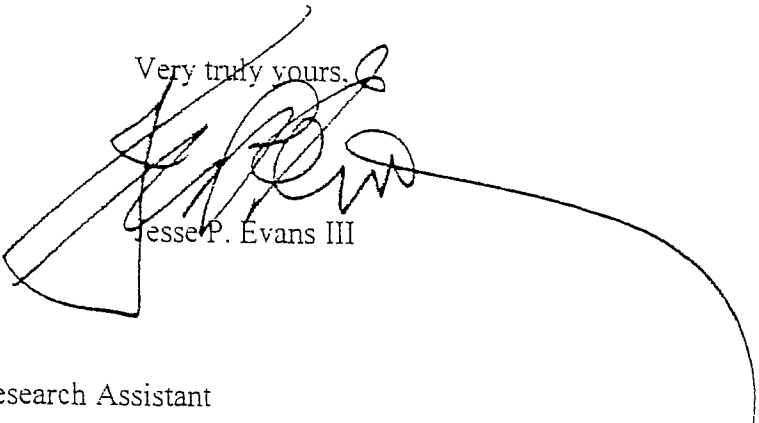
Dear Ms. Bern:

I represent Stoneridge Homes, Inc. and the Home Builders Association of Alabama. In connection with that representation, I am enclosing a Petition for Declaratory Ruling that we request be heard by the State Board for Registration of Architects.

If you would kindly let me know the time and place for a hearing on this Declaratory Ruling, I would be most appreciative. Moreover, if there is anything else that we need to do in order to have a hearing on this petition, please let me know and we will promptly comply. I do not see that there is any statute or regulation that requires a filing fee to be paid or anything to be done other than the filing of the Petition.

Thank you in advance.

Very truly yours,


Jesse P. Evans III

JPE/cn
Enclosure

cc: Debbie Whitman, Legal Research Assistant
Mary Goldthwaite
Jim Wright *Via U.S. and Electronic Mail: jwright@stoneridgehomesinc.com*
Jason Reid *Via U.S. and Electronic Mail: jasonreid@hbaa.org*

Erwins & Erwins
LAWYERS

NOV 23 2017

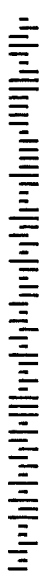
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Elizabeth C. Bern, Executive Director
State of Alabama
Board for Registration of Architects
100 North Union Street, Suite 390
Montgomery AL 36104-3762

BEFORE THE ALABAMA STATE BOARD FOR REGISTRATION OF ARCHITECTS

In the Matter of:

Stoneridge Homes, Inc., an Alabama corporation and Home Builders Association of Alabama, Inc., an Alabama non-profit corporation,

Petitioners

Petition for Declaratory Ruling

Stoneridge Homes, Inc., an Alabama corporation (Stoneridge), and Home Builders Association of Alabama, Inc., an Alabama non-profit corporation (HBAA), for petition for declaratory ruling, say:

I. Petitioners.

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2. HBAA is a non-profit corporation organized and existing under the laws of the State of Alabama and is a trade association of approximately 7,500 members in 26 local associations in Alabama serving as an advocate for Alabama's housing industry.

II. Jurisdiction.

3. The Alabama State Board for Registration of Architects (Board) is organized and exists under and pursuant to Chapter 2 of Title 34 of the Code of Alabama.

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8. HBAA's members would otherwise have standing to maintain this petition in their own right, the interests HBAA seeks to protect in this matter are germane to its purpose, and neither the claims asserted, nor the relief requested requires the participation of individual members.

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11. Ala. Code § 34-2-39(d) grants the power and authority to the Board to make and adopt bylaws, rules, and regulations consistent with the provisions of Chapter 2 of Title 34 and pursuant to the state administrative procedure law.

12. Ala. Code § 41-22-11 provides that a person who is substantially affected by a rule may petition an agency for a declaratory ruling with respect to the validity or applicability of a rule and a declaratory ruling is binding on the agency and the person requesting it until altered or set aside by a court.

IV. The Regulation.

13. Ala. Admin. Code r. 100-X-4-.10 is a regulation of the Board (the Regulation) setting out an exemption from the practice of architecture:

An architect is not required for design of a detached single-family residence, a farm building, or utility works, structure or building (provided the person performing architectural works is employed by an electric, gas, or telephone public utility regulated pursuant to Alabama law or by a corporation affiliated with such utility).

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15. The Regulation exceeds the authority of the Board's rule and regulation making authority in that it exempts the design of only detached single-family residences while the applicable statute exempts all single-family residences.

16. Other agencies and boards of the State of Alabama have adopted rules and regulations to the effect that townhouses are considered single-family dwellings and are exempt from certain laws. *E.g.* Ala. Admin. Code r. 230-X-1-.13.

V. Substantial Affect on Petitioners.

17. Except as may be exempted from the practice of architecture, the services of a registered architect are required on all buildings and all officials of the State of Alabama, or any city, town, or county therein who are charged with the enforcement of laws, ordinances, or regulations relating to the construction or alteration of buildings are not allowed to accept or approve any plans or specifications unless prepared by a registered architect pursuant to Chapter 2 of Title 34 of the Code of Alabama.

18. Prior to the commencement of this proceeding, Stoneridge made application to the Inspection Department of the City of Huntsville for a building permit for attached townhouses which will be sold as single-family residences to various owners.

19. The Inspection Department of the City of Huntsville rejected Stoneridge's plans and specifications for the proposed townhouses because they were not prepared by a registered architect pursuant to Chapter 2 of Title 34 of the Code of Alabama.

20. Upon information and belief Stoneridge alleges that the rejection of its plans and specifications and its application for a building permit is based on the Regulation in that the plans and specifications were for attached townhouses or dwellings and not detached dwellings.

21. A townhouse is a single-family dwelling.

22. The Board has published one or more circulars stating that an architect is not required for residential plans if the building is a detached, single-family home, inferring that an attached single-family building, such as a townhouse, requires the services of an architect.

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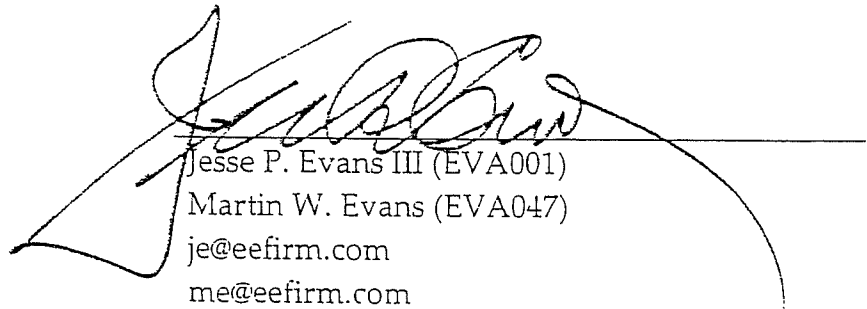
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25. HBAA and its members, including Stoneridge, will incur additional costs, expenses, and delays in connection with its future building permits and construction pursuant to such permits if it is required to have the plans and specifications prepared by a registered architect.

V. Relief Requested.

Petitioners request that the Board take jurisdiction of this matter, set a date and time for a hearing of this Petition, and, upon a final hearing, issue a declaratory ruling consistent with the statutory exemption contained in Ala. Code § 34-2-32(b) that exempts from the practice of architecture the design of any single-family residence building whether detached or not.

Awarding Defendants such other appropriate and different relief.



Jesse P. Evans III (EVA001)
Martin W. Evans (EVA047)
je@eefirm.com
me@eefirm.com

Attorneys for Petitioners
EVANS & EVANS
Renasant Place
2001 Park Place, Suite 540
Birmingham, Alabama 35203
Tel: 205.545.8085

CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE REFERENCE SERVICE
JERRY L. BASSETT, DIRECTOR

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on the **19th** day of **February**, 2010, and filed with the agency secretary on the **19th** day of **February**, 2010.

AGENCY NAME: BOARD FOR REGISTRATION OF ARCHITECTS

_____ Amendment XX New _____ Repeal (Mark appropriate space)

RULE NUMBER: Chapter 100-X-4

RULE TITLE: Scope of Practice

ACTION TAKEN: Adopted new chapter that will provide guidance to architects and other building professionals regarding the scope of architectural practice in Alabama. The new chapter was adopted with minor changes from the original proposal, due to comments received--specifically Rule Numbers 100-X-4-.07 and 100-X-4-.11.

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XXVII, ISSUE NO. 2, AAM, DATED NOVEMBER 30, 2009.

STATUTORY RULE MAKING AUTHORITY: §34-2-39

REC'D & FILED

FEB 19 2010

Cynthia M Kim
Certifying Officer.

LEGISLATIVE REFERENCE SERVICE

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

Folsom Administrative Building
64 North Union Street
Suite 749
Montgomery, Alabama 36104



Telephone: (334) 242-8353
Facsimile: (334) 353-9001

Randy C. Sallé
Acting Secretary

ALABAMA OFFICE FOR REGULATORY OVERSIGHT
OF BOARDS AND COMMISSIONS

September 30, 2015

Elizabeth Bern, Executive Director
State of Alabama Board for Registration of Architects
770 Washington Avenue, Suite 150
Montgomery, Alabama 36130-4450

RECEIVED
OCT 2015
STATE OF ALABAMA
BOARD OF ARCHITECTS

Re: Review of State Board for Registration of Architects' Rules

Dear Ms. Bern:

On September 3, 2015, you requested the Alabama Office for Regulatory Oversight of Boards and Commissions to review the State of Alabama Board for Registration of Architects' rules and regulations. ALA. CODE § 34-2-30, *et seq.* and ALA. ADMIN. CODE r. §100-X-1, *et seq.* This office reviews rules and certain licensing actions proffered by the State's various boards and commissions to ensure those rules are based upon clear state policy and do not result in anticompetitive conduct without a significant and corresponding state interest. The scope of review is based upon the United States Supreme Court holding in *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S. __ (2015).

Based upon a review of the statutory law governing architects, ALA. CODE §§ 34-2-30 through 34-2-42 (1975); and the State Board for Registration of Architects Administrative Code § 100-X-1, *et seq.*, the undersigned does not recommend any changes to the Board's rules. Certainly the Board will need to continue to review issues that are industry specific which may lead to future rule amendments.

There is language that prohibits non-registered architects from practicing in the State of Alabama; however, the reasons for that limitation conform to the Legislature's clearly stated policy that registration is necessary to safeguard the health, safety and welfare of the public. Furthermore, registered architects are responsible for adhering to the laws and rules of the Board. Those laws and rules are clearly established in the Board's rules.

Regards,

Randy C. Sallé
Acting Secretary