

FACTS

Thomas is the owner of real property located at 234 Middle Street in the Old Village section of Mount Pleasant, South Carolina. The HDPC is a board of architectural review created pursuant to South Carolina Code § 6-29-870 and, under the Town's Zoning Code, must approve any new construction in the Old Village. As part of the approval process, the HDPC considers, among other things, whether the construction plans provide an adequate "front setback" - the distance the house will be built, or set back, from the front property line. This approval takes the form of a Certificate of Appropriateness ("COA").

Section 156.432(G) of the Town's Zoning Code empowers the HDPC to adopt design guidelines for the purpose of reviewing the design of new construction in the Old Village. The HDPC's Design Guidelines state, in relevant part, as follows:

New Construction

See Approved Materials List

1. New construction must be harmonious in size, scale, massing, form, roof type, and location on the lot to the majority of existing buildings on the block in particular, and in the district generally.
2. Generally new construction should adhere to the underlying setback requirements of the lot. **Where the setbacks of structures on a block deviate from the underlying code**, the setbacks should be determined by the existing streetscape, particularly the setbacks of structures on adjacent lots. (emphasis added).

(Record, Ex. H, April 11, 2022 Staff Report at pdf page 11 of 48).

Thomas submitted an application for a COA with plans for the new house, garage and swimming pool on January 17, 2022. (Record, Ex. K, Appellant's Historic District Preservation Commission Application). The plans included a site plan which shows that all portions of the proposed house meet the twenty-five (25) foot front setback required by the "underlying" Zoning

Code. (Record, Ex. K at pdf page 13 of 29). The site plan also depicts an “Adjacent Home Line” to illustrate where Thomas’s house would align in relation to the existing houses on the two properties to either side. The front porch and a small portion of the proposed house would extend approximately thirteen (13) feet forward of the Adjacent Home Line but still be more than twenty-five (25) feet from Thomas’s front property line along Middle Street.

Thomas’s application for a COA came before the HDPC for a hearing at its meeting on April 11, 2022. The HDPC voted at the meeting to deny the COA and issued its written decision the next day, stating: “234 Middle Street application was denied a COA based on the home not aligning with the rest of the street block per the Design Guidelines, New Construction # 1 and 2.” (Record, Ex. A, Commission’s Final Order). While the decision references both Design Guidelines, the basis given for the denial – “the home not aligning with the rest of the street block” – implicates the more specific Design Guideline No. 2 relating to front setbacks.

STANDARD OF REVIEW

On appeal to the circuit court, “[t]he findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal,” and “the court must determine only whether the decision of the board is correct as a matter of law.” S.C. Code § 6-29-930(A). This is effectively the same standard as that for appeals from boards of zoning appeals under S.C. Code § 6-29-840(A) (“findings of fact . . . must be treated in the same manner as a finding of fact by a jury”). “The decision of the zoning board will not be upheld where it is based on errors of law, ... or where there is no legal evidence to support it, or where the board acts arbitrarily or unreasonably, ... or where, in general, the board has abused its discretion.” *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 755 (1953) (quoting 58 Am. Jur. *Zoning* § 231). In exercising their discretion, these boards are not left free to make any determination whatever that appeals to their

sense of justice but must abide by and comply with the standards prescribed by the local ordinances and zoning statutes. *Stevenson v. Board of Adjustments of City of Charleston*, 230 S.C. 440, 96 S.E. 2d 456 (1957).

ANALYSIS

Design Guideline No. 2 begins by stating “[g]enerally new construction should adhere to the underlying setback requirements of the lot.” As shown on the plans, Thomas’s proposed house meets the underlying Zoning Code’s twenty-five (25) foot front setback. Design Guideline No. 2, however, goes on to provide an exception “[w]here the setbacks of structures on a block deviate from the underlying [zoning] code.” In that instance, the HDPC may determine setbacks for new construction by the existing streetscapes and particularly the setbacks of structures on adjacent lots. The plain language of Design Guideline No. 2 mandates the conclusion that the exception applies only when the setbacks of the houses on adjacent lots deviate from the Zoning Code (i.e. the houses are less than twenty-five (25) feet from the front property line). *See Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 25, 579 S.E.2d 334, 337 (Ct. App. 2003) (“The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction.”).

In this case, the HDPC invoked the exception to deny the COA because Thomas’s proposed house projected some thirteen (13) feet farther toward the street than the houses on adjacent lots. The adjacent houses, however, are more than twenty-five (25) feet from their respective property lines and, accordingly, do not deviate from the front setback requirement of the underlying Zoning Code. Therefore, the exception does not apply. In using this inapplicable exception to deny a COA to Thomas, the HDPC committed an error of law. Thomas’s proposed house meets the front setback requirement of the underlying Zoning Code and, accordingly, complies with Design Guideline No. 2’s general provision that “new construction should adhere to the underlying

setback requirements of the lot.” Because the HDPC gave no other reason for denying the COA, the Court determines that Thomas was entitled to receive the COA and that the HDPC should be required to issue the COA forthwith.²

Now, therefore, it is

ORDERED that 1) the decision of the HDPC denying the Certificate of Appropriateness is reversed; 2) the HDPC is directed to issue the Certificate of Appropriateness for the plans as submitted within thirty (30) days from the date of this Order; and 3) Thomas must pursue any petition for fees and costs as a result of this Order within 30 days of this Order, and the Town and the HDPC shall have an opportunity to oppose such a petition within 30 days thereafter.

AND IT IS SO ORDERED.

Bentley D. Price
Presiding Judge

CHARLESTON, SC
October __, 2022

² Thomas’s property is zoned R-2 (Low Density Residential District) but is also located within the overlay district known as the the Old Village Historic District. The Court rejects the argument from the Town and the HDPC that the 25-foot front setback for R-2 zoning does not apply in the overlay district for two reasons. First, overlay districts do not replace the underlying zoning in totality; instead, they provide additional requirements which may or may not change various aspects of the underlying zoning. Second, if the 25-foot R-2 setback did not apply, the references in Design Guideline No. 2 to “the underlying setback requirements of the lot” and “the underlying code” would have no meaning.



Charleston Common Pleas

Case Caption: Craig W Thomas VS Mount Pleasant Town Of , defendant, et al

Case Number: 2022CP1002041

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766