

Exhibit A

Order dated April 9, 2024

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Martin Alloy, Michael Laughlin, and)
Henry Grimball,)
)
Appellants,)
)
v.)
)
City of Charleston, South Carolina Board of)
Architectural Review-Small and 117 SOB)
Project, LLC,)
)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2023-CP-1002575

ORDER



Before the Court is an appeal of a unanimous decision by the City of Charleston Board of Architectural Review-Small, granting conceptual approval of an application (with final details to staff), at a public hearing attended by the appellants. The respondents filed motions to dismiss the appeal on statutory, procedural, and jurisdictional grounds. All parties additionally briefed and argued the merits of the appeal. The appellants lastly filed a motion for a writ of supersedeas. On February 29, 2024, the Court held a hearing via Webex and entertained the parties’ oral arguments on the appeal and all pending motions. The Court then took the matter under advisement and carefully reviewed the parties’ submissions and the entirety of the record.

For the reasons more fully set forth below, the Court GRANTS the respondents’ motions to dismiss the appeal. However, in the interests of judicial economy, the Court has also considered the merits of the appeal and concludes that there is evidence in the record to support the Board’s decision and that it is not contrary to law. Thus, even if the appellants perfected the appeal as a statutory, procedural, jurisdictional matter, the Court would nonetheless AFFIRM the decision of

the Board based upon the record. Finally, the Court DENIES AS MOOT the appellants’ motion for a writ of supersedeas as to the appeal to the circuit court.

PROCEDURAL HISTORY

On April 27, 2023, the City of Charleston Board of Architectural Review-Small held the public hearing attended by the appellants and unanimously granted the application for conceptual approval (with final details to staff).

On May 26, 2023, which was 29 days after the Board rendered its decision on April 27, 2023, the appellants filed their original “Notice and Petition of Appeal” with this Court. It named the City of Charleston Board of Architectural Review-Small as the only respondent.

On June 2, 2023, which was 36 days after the Board rendered its decision on April 27, the appellants filed an “Amended Notice and Petition of Appeal.” It named an additional respondent, 117 SOB Project, LLC, the owner/applicant/permittee.

On July 14, 2023, 117 SOB Project, LLC filed a motion to dismiss the appeal.

On November 6, 2023, in advance of a hearing scheduled for November 8, 2023, the Court entered a consent order of continuance that was submitted by the parties to allow time for mediation. A mediation was then held that ended in an impasse.

On December 12, 2023, the City of Charleston Board of Architectural Review-Small filed a motion to dismiss the appeal.

On January 30, 2024, the appeal and the respondents’ respective motions to dismiss were put on the roster to be heard on February 29, 2024. The Court also instructed the parties to file all briefs the week prior to the hearing, meaning by Friday, February 23, 2024.

On February 16, 2024, eight months after the appellants filed their appeal, and two weeks before the hearing, they filed a motion for writ of supersedeas.

On February 23, 2024, the respondents timely filed their briefs, per the Court's instruction.

On February 27, 2024, which was four days after the Court instructed the parties to file their briefs, the appellants filed their briefs.

On February 28, 2024, a reply brief was filed by 117 SOB Project, LLC.

On February 29, 2024, the Court held a hearing via Webex on the appeal and all pending motions.

EVIDENCE APPEARING IN THE RECORD

This case relates to a restoration project at 117 Broad Street. 117 SOB Project, LLC (for the family of Nedenia Rumbough & Jan Roosenburg) is endeavoring to restore a historically significant 18th century house, known as the Edward Rutledge House (the youngest signatory of the Declaration of Independence), into their personal residence. In modern times, the house was modified for use as a hotel. Work is now required to restore the property in a manner consistent with its original Georgian period architectural style, and to correct water intrusion problems that are actively destroying the structure.

The project includes alterations to the current state of the property that are within the purview of the City of Charleston Board of Architectural Review-Small under Part 6 of the Zoning Ordinance of Charleston. Accordingly, 117 SOB Project, LLC, represented by its architect (Simons Young, notably, a descendent of Edward Rutledge), filed an application with the Board for conceptual approval of a set of architectural plans. At a public hearing on April 27, 2023, the Board unanimously (by a vote of 5 to 0) granted the application for conceptual approval.

The evidence before the Board in support of the application included: (1) a 32-page application containing the following subsections: (a) history, (b) existing conditions, (c) proposed

site plan, (d) proposed floor plans, (e) proposed elevations, and (f) proposed perspectives; (2) testimony by architect Simons Young; (3) testimony by landscape architect Glen Gardner; (4) testimony by a representative of the Preservation Society of Charleston; (5) a letter of support from the Historic Charleston Foundation; and (6) testimony by the City’s staff recommending approval.

The appellants, themselves, also added evidence in support of the application. The appellants are three residents of Orange Street (to the south of 117 Broad Street). They were present at the public hearing, as they acknowledge in their appeal petition. One of the three appellants, Mr. Henry Grimball, took the lead in speaking for the appellants at the public hearing. He testified: “*We applaud changes he wants to make in the main house in 117 [Broad Street].*” (Tr. p. 9, ll. 6-7). He explained that their concern, rather, was that 117 SOB Project, LLC would next apply to create an opening through a wall on Orange Street that they believed would exacerbate a problem with limited parking space on Orange Street: “*And the next shoe to fall is going to be that break in the wall which we are adamantly opposed . . . And if they do that, then they’re going to see [sic] We’ve got to have an opening on Orange street. We object to that.*” (Tr. p. 10, ll. 1-2, ll. 6-7). That to which they objected, an opening in the wall on Orange Street, however, was not requested in the application at issue and consequently was not before the Board – and is not now before this Court.¹

The appellants’ speculations were rebuffed during board discussion by a board member who stated: “The back lot [17 Orange] is a separate lot and there is nothing in this submittal that pertains to that back lot and so I think we should focus on what is being submitted. It would be

¹ The issue of opening the wall on Orange Street was later raised in a separate application, by 17 Orange, LLC, owner of 17 Orange Street. That application was denied by the Board at a public hearing on July 13, 2023. 17 Orange, LLC initially appealed that decision to this Court, before voluntarily withdrawing it, with the City’s consent. Case No. 2023-CP-1003901. The issue of an opening in the wall is not before this Court in this appeal.

inappropriate for us to focus on something speculative that might occur in the future on a separate lot.” (YouTube Video Recording of the Public Hearing, at 3 hours, 14 minutes, 30 seconds, available at <https://www.youtube.com/live/lpkg2bvvmIk?si=iYezjcQ9HytSOWyl>) (Tr. pp. 13-14, ll. 23-3).

Mr. Grimball also critiqued the sign that was posted on the property in advance of the public hearing because he believed it insufficiently described the project. (Tr. p. 7, ll. 10-20). The sign posted on the property was prepared by the City of Charleston Board of Architectural Review-Small on its standard form, intended to be visible from a distance. It specified the time, date, and location of the meeting. It named the Board and the Department of Planning. It included a generalized description of the project in the space allotted on the form: “**LOCATION:** 117 Broad **REQUEST:** alterations to front stairs, rear fenestration.” It also provided instructions to “**CALL 724-3781 FOR INFORMATION**” and the website address, “www.charleston-sc.gov/bar,” where the agenda, including the architectural plans submitted with the application, were made publicly available online.

Mr. Grimball testified that, after seeing the sign, one of the other appellants, “*Mike Laughlin came down here[] And actually looked at the agenda,*” (Tr. p. 7, l. 19), which they “*applaud*” as to 117 Broad Street, (Tr. p. 9, ll. 6-7), notwithstanding their concern about what the owners might apply for “*next*” regarding the wall on Orange Street. (Tr. p. 10, ll. 1-2, ll. 6-7). Mr. Laughlin also submitted a letter dated April 25, 2023, in advance of the April 27, 2023, public hearing, commenting on the architectural plans that had been submitted and he had been able to review.

CONCLUSIONS OF LAW

I. THE MOTIONS TO DISMISS THE APPEAL

An appeal of a board of architectural review decision to circuit court is governed by S.C. Code Ann. § 6-29-900(A). The owner and successful applicant or permittee is a necessary party, as held in *Spanish Wells Property Owners Ass’n, Inc. v. Board of Adjustment of Hilton Head Island*, 367 S.E.2d 160, 295 S.C. 67 (1988). The strict 30-day deadline to file an appeal runs from the date the decision is made at a public hearing attended by the appellants, as construed in *Blind Tiger, LLC v. City of Charleston*, 621 S.E.2d 361, 362-3 (2005). The deadline is jurisdictional, as held in *Vulcan Materials v. Greenville Cty. Bd.*, 342 S.C. 480, 489, n.7, 536 S.E.2d 892 (Ct. App. 2000). The statute is controlling over the rules of civil procedure and provides no mechanism for an appeal to be amended, as held in *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004).

Discussing the above authorities together, the South Carolina Court of Appeals, in *Friends of McLeod*, 658 S.E.2d 544, 376 S.C. 610 (Ct. App. 2008), *vacated on other grounds*, 682 S.E. 2d 488, 384 S.C. 438 (2009), explained that our Supreme Court’s holding in *Spanish Wells* means that a notice of appeal that does not name the owner of the property and successful applicant or permittee, a necessary party, cannot later be cured by amendment because the timeliness of filing of the appeal is jurisdictional. Though the opinion issued by the Court of Appeals, in *Friends of McLeod*, was later vacated on other grounds by the Supreme Court “based on an agreement that renders this matter moot,” this Court is persuaded that its analysis remains correct and the other authorities it cites still support its legal conclusion. This Circuit Court is also persuaded by its own prior decisions reaching the same conclusion. *See e.g., Citizens for Sensible Planning v. City of*

Charleston, Case No. 2016-CP-10-6546, Order dated June 28, 2017 (Circuit Court, County of Charleston) (Judge Nicholson).

Accordingly, the failure to name 117 SOB Project, LLC, the owner of the property and successful applicant or permittee, a necessary party, in the original notice of appeal, filed on May 26, 2023, within 30 days of the public hearing attended by the appellants where the Board made its decision on April 27, 2023, was a fatal, statutory, jurisdictional defect. The filing of the amended notice of appeal, on June 2, 2023, was 36 days after the Board’s April 27, 2023, decision at the public hearing, and thus after the strict statutory period had expired.

II. THE APPEAL ON THE MERITS

The statutory appellate standard of review for this Circuit Court to apply in this matter is highly deferential to the Board, in that affirmance is required if there is “any evidence” to support the decision on appeal. *See Kurschner v. City of Camden Planning Comm'n*, 656 S.E.2d 346, 351, 376 S.C. 165 (2008); *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004); *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 552 S.E.2d 42, 44 (Ct. App. 2001). “The findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence.” S.C. Code Ann. § 6-29-930 (A).

Here, the “any evidence” standard is satisfied. The Court has reviewed the record and found that supporting evidence was presented to the Board, in the form of documents and testimony, by multiple architects, preservation groups, City staff, and the appellants’ themselves. Accordingly, this Court cannot substitute its judgment for that of the Board in exercising its discretion.

Despite the evidence supporting the Board’s decision, the appellants argue that they lacked sufficient notice of the changes that were under consideration because of the wording of the sign

and the agenda. They argue that this is a violation of due process. The Court has fully considered and does not agree with the due process argument and notice argument.²

The sign enabled passers-by to see that the Board would be holding a public hearing about a request to make alterations to 117 Broad Street and directed them to call the Department of Planning for more information, or visit the City’s website, where the agenda, including the architectural plans submitted with the application, were made publicly available online. There is no statutory requirement for such a sign. Further, the sign was consistent with the City’s zoning ordinance (Section 54-239), the Board’s procedural rules (Article II, Section 5), and common practice and sense. The Court will not additionally impose an impractical, if not impossible burden on the City to exhaustively describe visually complex architectural plans in writing on a sign, or to otherwise post the actual architectural plans on the outside of a building.

Further, the evidence in the record detailed above reflects that the appellants saw the sign, obtained the full application, reviewed the architectural plans, submitted letters about the same in advance of the hearing, attended the hearing, were given an opportunity to speak at the hearing, and applauded the proposed changes to the house at 117 Broad Street (despite their speculation about what might happen next with respect to the wall on Orange Street). The appellants can make no convincing argument that they were significantly prejudiced by the sign or wording of the agenda.

The Court likewise finds no merit in the appellants’ related arguments that the Board somehow took improper action in executive session while receiving legal advice. There is simply

² The Act requires that an appeal from the Board to this Court must be taken within 30 days of actual notice of the decision: “by filing with the clerk of court a petition in writing setting forth plainly, *fully*, and distinctly why the decision is contrary to law.” S.C. Code Ann. § 6-29-900(A) (emphasis added). The appellants filed a short petition, containing conclusory statements. They later elaborated upon and added to their arguments in a lengthy brief and at the oral argument.

no evidence that the Board acted improperly in executive session. The Board stated that no action or votes had been taken in executive session. The Court cannot infer that someone making a motion immediately upon coming out of executive session engaged in any voting on the matter while in executive session.

III. THE MOTION FOR A WRIT OF SUPERSEDEAS

On February 16, 2024, Appellants filed a Motion for Writ of Supersedeas, requesting this court “issue a writ of supersedeas in this matter pursuant to S.C. Code Ann. § 6-29-920(B) to preserve all issues during the pendency of the appeal to the circuit court.” As this Order contemplates a final resolution to the Appeal in circuit court, the requested relief is moot.

WHEREFORE, for the above reasons, the Court GRANTS the respondents’ motions to dismiss the appeal and further concludes that it would nonetheless AFFIRM the Board’s decision on the merits. The Court also DENIES the appellants’ motion for a writ of supersedeas.

IT IS SO ORDERED.



Charleston Common Pleas

Case Caption: Martin Alloy , plaintiff, et al VS Board Of Architectural Review
Small Charleston South Carolin
Case Number: 2023CP1002575
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764