

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

C/A NO.: 2023-CP-40-01426

Allen University,

Appellant,

v.

City of Columbia Design/Development
Review Commission,

Respondent.

**ORDER AFFIRMING DECISION OF
CITY OF COLUMBIA
DESIGN/DEVELOPMENT REVIEW
COMMISSION AND GRANTING
PARTIAL MOTION TO DISMISS**

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Oct 28 2024

SC Court of Appeals

I. Introduction and Standard of Review

Appellant Allen University (“Appellant”) appealed the decision by the City of Columbia Design/Development Review Commission (“DDRC” or “Respondent”) to deny Appellant’s request for a certificate of design approval for demolition of the structure at 1421 Heidt Street.

The DDRC held a hearing on Appellant’s request on February 16, 2023. At the conclusion of the hearing, the DDRC, by motion, denied the demolition request. The DDRC provided a written decision to Appellant on February 17, 2023, denying the “request for demolition based on section 17-2.5g6c of the Unified Development Ordinance.”

Appellant filed this Appeal on March 16, 2023. Appeals to the circuit court are authorized by S.C. Code Ann. § 6-29-900. This Court heard arguments from the parties on June 14, 2024. This Court has also reviewed the parties’ submissions and the video recording of the hearing before the DDRC.

The DDRC is a board of architectural review authorized by state statute. *See* S.C. Code Ann. § 6-29-870(A); Unified Development Ordinance (“UDO”) § 17-2.3(e) (establishing a board

of architectural review in accordance with State law).¹ Appeals may be taken to the DDRC where it is alleged there is an error in any order, requirement, determination or decision of the administrative official. S.C. Code Ann. § 6-29-880.

This Court's standard of review is governed by S.C. Code Ann. § 6-29-930(A). This section provides in part that "[t]he 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. . . . In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." *Id.*

Section 6-29-930 is very deferential to a board's findings of fact. *See Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000) (requiring that a court not disturb a board's findings of fact unless there is no evidence reasonably supporting the board's decision). When reviewing a decision by a board of architectural review, a court should act only where the board has abused its discretion by committing errors of law or bases its decision on findings of fact which are not supported by the evidence. *Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995). Where a board's decision is even fairly debatable, the court must leave intact that decision. *Id.*

"Courts are bound to afford substantial deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 465, 602 S.E.2d 76, 79 (Ct. App. 2004), *aff'd*, 372 S.C. 230, 642 S.E.2d 565 (2007). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. *Rest. Row Assocs. v. Horry Cnty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

¹ The parties provided copies of the relevant City ordinances.

II. Analysis

A. Applicable state law and City ordinances and guidelines.

S.C. Code Ann. § 5-7-30 provides a broad grant of authority to local governments to enact ordinances and regulations for the promotion of general welfare under general police powers. It has long been accepted that local governments have the power to regulate aesthetics, and aesthetic considerations are clearly a legitimate interest for local governments. *See Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 397 S.E.2d 662 (1990) (finding the state may legitimately exercise its police powers to advance aesthetic values); *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462 (2004); *see also Taylor v. Town of Plaistow*, 872 A.2d 769 (N.H. 2005) (stating a municipality may exercise its zoning power to advance aesthetic purposes because the preservation or enhancement of the visual environment may promote the general welfare).

The purposes of the City’s Unified Development Ordinance are to, among other things, “[p]rotect and preserve scenic, historic, or ecologically sensitive areas.” UDO § 17-1.3(4). The city council has announced its public policy to maintain strong neighborhoods and to protect their character. UDO § 17-1.3(8). Further, in protection areas, “the historic character of a district shall be retained and preserved through the preservation of historic materials and features which characterize the historic district.” UDO § 17-2.5(g)b.2.(b).

Certificates of design approval are required for certain actions, such as demolition, in historic districts. UDO § 17-2.5(g); § 17-2.5(g)b.(v). The structure at 1421 Heidt Street is in the Waverly Protection Area. UDO § 17-3.7(j).

As part of the designation of historic protection classifications, the city council has adopted specific standards for demolition of historic buildings. UDO § 17-2.5(g)(6)c. The DDRC's review of Appellant's request for demolition was governed by these standards and guidelines.

B. The DDRC's decision was based on the applicable ordinance and there is evidence in the record supporting the decision.

Appellant argues the DDRC's decision was "erroneous, defective and contrary to applicable law." Appellant asserts the DDRC abused its discretion in applying the standards for demolition. A board abuses its discretion when its "decision is unsupported by the evidence or controlled by an error of law." *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 182, 813 S.E.2d 874, 880 (Ct. App. 2018).

The specific standards for demolition are as follows:

- (a) The historic or architectural significance of a building, structure or object;
- (b) The importance of the building, structure or object to the ambience of a district;
- (c) Whether the building, structure or object is one of the last remaining examples of its kind in the neighborhood, the City or the region;
- (d) The existing structural condition, history of maintenance and use of the property. The deteriorated condition of the historic building attributable to the owner's failure to provide proper maintenance over an extended period of time will not be considered a mitigating circumstance in evaluations for demolition;
- (e) A determination of whether the subject property is capable of maintaining a reasonable use and bearing a reasonable economic return on its current value without the demolition;

- (f) Whether there are definite plans for reuse of the property if the proposed demolition is carried out, and what the effort of those plans on the character of the surrounding area would be;
- (g) Whether the building or structure is able to be relocated, and whether a site for relocation is available; and
- (h) Whether the building or structure is under orders from the City to be demolished due to severe structural deficiencies.

UDO § 17-2.5(g)(6)c.

The DDRC heard evidence concerning the standards for demolition. City staff provided evidence in support of each criteria. The DDRC's decision was supported by the facts. So long as the DDRC considers each standard, and there is evidence presented as to each standard, this Court must affirm the decision.

In response to the evidence against demolition of the structure, Appellant verbally provided a rough estimate of renovation costs. Appellant explained that its board of trustees had approved the demolition of the structure in an attempt to counter the evidence that the structure was imminently important to the history of Allen University and the Waverly area. Appellant may think the building is no longer important or significant, but the DDRC was not required to accept this position. There was other evidence demonstrating the historic and architectural significance of the structure.

Members of the community also appeared and testified that the building is structurally sound and that the damages to the building were a result of Appellant attempting to demolish the building without first obtaining a certificate.

The president of the Waverly neighborhood association testified that the neighborhood has watched the building fall into disrepair for the last 15 years. The neighborhood has pleaded with the university to rehabilitate the structure. The president of the association stated he believed the university was destroying a part of its own history.

Evidence was presented that the structure was moved from its location on the campus of Allen University to its present location in 2008. The relocation was allowed with the understanding that the structure would be rehabilitated. Since then, however, the building has accumulated code violations based on the failure to maintain the structure. A representative from Historic Columbia testified that Appellant had breached its commitment to rehab the building after its relocation. At the time of its relocation, the president of Allen University stated the university was “proud” it was able to save the building, and that it was important to the university, the Waverly area, and Columbia as a whole.

In support of its appeal, Appellant asserts the matter should be remanded for a new hearing because the DDRC proceeded without “detailed written estimates of the cost of renovations from professional with experience working with historic buildings.” However, the applicable section of the UDO quoted by Appellant states that the zoning administrator, not the DDRC, may require an applicant to submit such estimates. There was nothing preventing Appellant from presenting renovation estimates to the DDRC in support of its application for demolition.

Appellant also asserts the matter should be remanded for a new hearing because the DDRC made a “determination” that Appellant could seek grants for the renovation of the building. The DDRC made no such determination. At the hearing on this matter, City staff indicated that there might be funding sources for restoration of this building. Appellant did not refute this assertion at the time. There is no evidence that the DDRC’s decision hinged on this fact.

Upon a review of the entire record, it is clear the DDRC considered the proper standards, and the DDRC made its decision based upon the evidence heard and submitted regarding the standards. Admittedly, the DDRC heard and received some conflicting evidence regarding the importance and significance of the building. However, as the fact finder, the DDRC, chose to rely on evidence that supported a denial of the request for demolition. There is evidence in the record that supported the denial.

This Court does not sit as a fact finder and this Court will not disturb the DDRC's decision if there is evidence in the record to support it. *Rest. Row Assocs., supra*. Here, there is evidence to support the DDRC's decision, and the DDRC's decision to deny the demolition is affirmed.

C. Respondent's Motion to Dismiss

Respondent also moved to dismiss certain portions of Appellant's notice of appeal based on lack of subject matter jurisdiction. In particular, Respondent moved to dismiss those portions of the notice of appeal that alleged (1) the DDRC's decision was based on a vague and unconstitutional standard, and (2) that the DDRC's decision constituted a taking of property pursuant to the South Carolina Constitution and the United States Constitution, as those issues were not raised before the DDRC.

Prior to the hearing, Appellant consented to the dismissal of its takings claims without prejudice.

This Court finds that Appellant did not raise the "vague and unconstitutional" argument below, however, a board of architectural review has only those powers "involving the structures and neighborhoods as may be determined by the zoning ordinance." S.C. Code Ann. § 6-29-880; *see Captain's Quarters Motor Inn, Inc. v. South Carolina Coastal Council*, 306 S.C. 488, 413 S.E.2d 13 (1991) (stating a statutorily-created board has only those powers expressly conferred by

statute or necessarily implied). Agencies and executive boards may not adjudicate facial constitutional challenges to statutes and regulations. *Travelscape, LLC v. SC Dep't of Revenue*, 391 S.C. 89, 108-09, 705 S.E.2d 28, 38-39 (2011). The DDRC does not have any powers other than those granted by statute or ordinance. The DDRC can only approve or deny a certificate for design approval based on the criteria in the zoning ordinance.

While the circuit court sitting as an appellate court cannot take new evidence and generally employs the same error preservation standards as the appellate courts, the court finds that it would have been futile to raise these issues before the DDRC, who is without authority to hear a constitutional challenge. The court therefore declines to dismiss these issues on error preservation grounds. See *Harbitt v. City of Charleston*, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009) (addressing Appellant's "additional grounds for relief" on Constitutional grounds which had not been raised before the Zoning Board).

"The power to declare an ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and cautiously, as it is not the court's function to pass upon the wisdom or expediency of municipal ordinances or regulations. *Harbitt, supra*. The court finds that the City has a legitimate interest in regulating the aesthetics of the community and protecting its historical landmarks, and the ordinance is rationally related to that lawful purpose. The DDRC carefully reviewed the factors set forth in the ordinance and there is evidence in the record to support its decision. The court finds no constitutional violation.

III. Conclusion

Therefore, for the reasons stated herein, Respondent's motion to dismiss is granted, and the DDRC's decision is AFFIRMED.

IT IS SO ORDERED.

September 25, 2024
Columbia, South Carolina



Richland Common Pleas

Case Caption: Allen University VS City Of Columbia Design/Development Review
Commission
Case Number: 2023CP4001426
Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762