STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Beach Jasper, LLC and Beach Equity Investments, LLC Plaintiffs, v. City of Charleston and City of Charleston Board of Architectural Review Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A NO. 2015-CP-10-3660 **ORDER ON MOTIONS TO INTERVENE**

PROCEDURAL HISTORY

This matter concerns a decision by the City of Charleston Board of Architectural Review ("BAR") and subsequent appeal by Plaintiffs Beach Jasper, LLC and Beach Equity Investments, LLC ("Beach Company"). The decision concerned a 6-acre piece of property at 310 and 322 Broad Street in downtown Charleston ("the Sergeant Jasper"). The primary development on this property is the Sergeant Jasper apartment complex, a well-known structure in the downtown Charleston area. The Beach Company owns this parcel along with the structure, and sought approval from the BAR to redevelop the property. After several meetings and revisions, the BAR denied the proposed application 3-2 on June 3, 2015. Plaintiff appealed the decision, and requested pre-litigation mediation pursuant to S.C. Code Ann. §§ 6-29-900(B)(2) and 6-29-915(A). Mediation is set for August 20, 2015.

This matter comes before this Court on two motions to intervene on this matter, including the appeal process and pre-litigation mediation. Charlestowne Neighborhood Association ("CNA") filed their motion to intervene on July 10, 2015, and amended their petition including

Harleston Village Association ("HVA") on July 20, 2015. The Preservation Society of Charleston and the Historic Charleston Foundation ("Preservation Groups") filed their motion to intervene on July 20, 2015. Plaintiff Beach Company does not consent to either party's intervention.

ARGUMENT SUMMARY

Both motions were argued before this Court on August 11, 2015. Present in the Courtroom were Richard Rosen and Alice Paylor as counsel for the Beach Company, and John Darby, President and CEO of the Beach Company. Also present were John Massalon and Ryan Neville for CAN and HVA, J. Rutledge Young, III and Julie Moore for the Preservation Groups and Frances Cantwell for the City of Charleston ("City") and the BAR. The City and the BAR did not take a position on the intervention, stating that anyone who has standing in this matter should have an opportunity to be heard, but that they are standing behind the decision of the BAR.

Interveners argued[1], in part, that they have a right to intervene on this action because they have standing pursuant to S.C. Code Ann. § 6-29-915(A). They argue that they have a substantial interest in the decision of the BAR, and that a motion to intervene "must be granted if the person has a substantial interest in the decision of the board of architectural review." S.C. Code Ann. § 6-29-915(A). CNA and HVA argued that they have a substantial interest due the proximity of their organizations' members to the proposed redevelopment (among other reasons). The Preservation Groups argue that they hold dozens of preservation easements on historic properties in the vicinity of the redevelopment site, and therefore they have property

[1] This summary does not represent a total review of each and every argument by the parties. Their arguments are fully encompassed in briefs and memoranda submitted to the Court, and in the transcript from the August 11, 2015 hearing.

rights and a substantial interest in the BAR decision and the litigation. The Preservation Groups argued that in addition to statutory standing, they have common law standing by suffering an injury-in-fact, "which is a concrete, particularized and actual or imminent invasion of a legally protected interest." *Carnival Corp. v. Historic Ansonbourough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014).

Both interveners support the decision of the BAR, but are concerned with the mediation and appeal process. They are worried about being closed off from the mediation between the City, the BAR, and the Beach Company. CNA and HVA stated that City representatives had previously spoken out in support of the proposed plan at previous meetings, and are worried that a closed-door mediation between the parties would not protect the interests of its members.

The Beach Company argues[2] that under the *Carnival* case, these entities do not have standing and are not entitled to intervene. They argue that the scenario in this case is nearly identical to the *Carnival* case and involves two of these same entities, as well as another neighborhood association and other entities. They state that these parties simply do not meet the three elements of standing: injury-in-fact, a causal connection between the injury and the challenged conduct, and likelihood that a favorable decision will redress that injury. They argue that interveners cannot demonstrate a particularized harm, only prospective harm and generalized grievances. They lay out arguments specifically targeted to the CNA, HVA, and the Preservation Groups individually in their brief.

Having heard the arguments of counsel and considered materials on record,

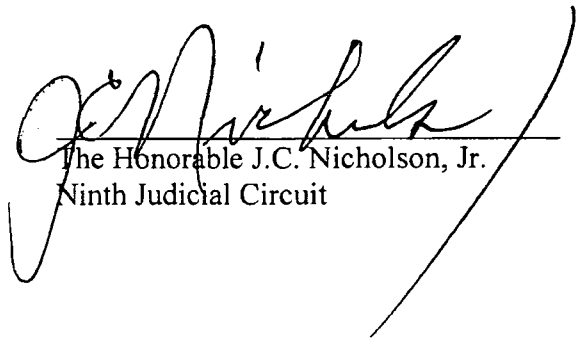
IT IS HEREBY ORDERED that interveners CNA, HVA, and the Preservation Groups shall have an opportunity to participate *in the mediation only*. This Court feels that the groups have

[2] Same as footnote 1.

demonstrated that the results of the mediation could result in "an injury-in-fact which is a concrete, particularized, and actual or **imminent** invasion of a legally protected interest." *Carnival*, 407 S.C. at 77, 753 S.E.2d at 851 (emphasis added). While the groups have indicated that they are in support of the decision of the BAR as it stands, the mediation could result in a settlement of the matter that would harm the interveners in this case. The Court feels that at this time, the interveners do not have any injury since the proposed project was rejected. However, the possibility of the imminent invasion of a legally protected interest gives them the right to participate in the mediation. The parties were permitted to speak at the BAR hearing, and thus they should be allowed a voice at the mediation.

The interveners shall be allowed to participate in the mediation through their representatives, *but they shall not have final decision rights*. They will not be allowed to unilaterally veto a proposal by the City, the BAR or the Beach Company. They shall be present to suggest solutions and propose their own ideas as to the future of the site. They shall be represented by their counsel, and by one representative of each group (CNA, HVA, the Preservation Society of Charleston and the Historic Charleston Foundation). This Order does not give the interveners the right to intervene on this litigation as a whole, and only grants them an opportunity to be heard at the mediation. They will not have the right to unilaterally reject a proposal that is agreed upon by the City, the BAR, and the Beach Company. Should the interveners feel that any proposed redevelopment plan approved by the Plaintiffs and Defendants does rise to the level of an injury-in-fact they may revisit their motion to intervene on the case as a whole at the appropriate time.

AND IT IS SO ORDERED.



The Honorable J.C. Nicholson, Jr.
Ninth Judicial Circuit

August 12, 2015
Charleston, South Carolina