

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr., South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated,

Appellants,

vs.

Town of Summerville and Town of Summerville Board of Architectural Review;

Respondents.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

C.A. NO.: 2015-CP-18-991

**ORDER AFFIRMING DECISIONS
OF TOWN OF SUMMERVILLE BOARD
OF ARCHITECTURAL REVIEW**

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OCT 22 2015
SC Court of Appeals

This matter came before the Court on August 14, 2015, for a hearing on Appellants' Petitions for appeal of the decisions of the Town of Summerville Board of Architectural Review of April 6, 2015 and May 11, 2015.¹ After due deliberation, and having considered the parties' submissions and memoranda, arguments of counsel, and applicable law, including S.C. Code Ann. § 6-29-900 *et seq.*, the Court hereby affirms the decisions of the Town of Summerville Board of Architectural Review.

BACKGROUND

The materials before this Court reveal the Town of Summerville entered into a Public-Private Partnership Agreement with developer Applegate & Co. on July 9, 2014 for a mixed use project known as "The Dorchester," which consists of a Town-owned conference center, Town-owned parking garage, and privately owned boutique hotel and privately

¹ Appellants filed two separate appeals, at C.A. Nos. 2015-CP-18-877 and 2015-CP-18-991, which were subsequently consolidated by consent order. The Petitions are therefore addressed collectively herein.

owned condominiums, to be developed in downtown Summerville. The Town of Summerville, Applegate & Co. and/or the architects, Goff D'Antonio Architects, and three private other property owners, the Gayle F.E. Cates Revocable Trust, the Faith Partnership and Anne Gaither, thereafter applied for approval of the project to the Town of Summerville Board of Architectural Review ("BAR" or "Board"), which was responsible for considering the aesthetics, design, architecture, height, mass, scale and harmony of the design project within the historical district of the Town of Summerville and for considering attendant demolitions for the project.

The BAR held a total of six (6) public meetings related to The Dorchester project. These meetings were held on October 6, 2014; November 3, 2014; January 5, 2015; January 12, 2015; April 6, 2015; and May 11, 2015. All of these meetings were advertised to and open to the public. Minutes of each of these meetings were prepared and subsequently approved by the Board at the following regular meeting. Additionally, each meeting was audio recorded, and transcripts of the audio recordings were subsequently prepared and submitted to the Court. At these meetings, permit applicants presented architectural renderings, drawings, site plans and specifications, and discussed salvaging of materials of the existing structures. During each of these presentations, members of the BAR commented, expressed concerns, and suggested changes. Members of the public were allowed to speak and comment. The minutes of each meeting, the transcripts of the audio recordings of each meeting, and the various submissions of the project applicants show revisions to the plans and specifications in accordance with the suggestions of the BAR and the public at each stage of the process.

The BAR gave conceptual approval of The Dorchester project, to include demolition and/or salvaging of materials of existing structures as well as construction of the development project, at its public meeting of January 5, 2015. At its January 12, 2015 public

meeting, the BAR approved demolition of the existing structures contingent only upon the final approval of the project. At its public meeting of April 6, 2015, the BAR gave conditional final approval of the project, requesting only minor changes and samples of certain building materials from the design team. On May 11, 2015, the BAR granted final approval of the project.

Appellants filed a Petition for appeal on May 6, 2015 of the BAR's April 6, 2015 decision, and filed an additional appeal on May 22, 2015 of the BAR's May 11, 2015 decision.

On August 5, 2015, Respondents filed with this Court and served upon Appellants a copy of the proceedings held before the Board, including a transcript of the evidence heard before the Board and the decision of the Board including its findings of fact and conclusions. These materials were duly certified as a complete copy of the relevant proceedings held before the Board. This duly certified copy of the proceedings included, among other things: minutes of each of the six public meetings; transcripts of the audio recordings of each of the public meetings; the agenda for each of the public meetings; advertisements, notices and letters to members of the public regarding each of the meetings; sign-in sheets by which members of the public requested and were granted time to provide comment on the project; and the various submissions of the applicants by and through the design team, including architectural and three-dimensional drawings, site plans and specifications.

The duly certified copy of the proceedings held before the Board further included the "Decision of the Town of Summerville Board of Architectural Review, Including Findings of Fact and Conclusions of Law" (hereinafter "BAR Order"), which was adopted by the Board at its public meeting of August 3, 2015. The BAR Order provides a chronological history of events, including a summary of presentations, discussions, comments, and motions made and passed at the various public meetings; provides references to applicable legal authority;

and provides the conclusions or decisions of the BAR. At the request of the Court, Respondents also provided minutes of the BAR meetings of June, July and August of 2015, wherein the BAR Order was discussed and ultimately approved.

STANDARD OF REVIEW

The statute governing BAR appeals, S.C. Code Ann. § 6-29-930, provides "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. . . . 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."

On appeal to the circuit court, the findings of fact by a board of architectural review shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence. See S.C. Code Ann. § 6-29-930..

The BAR has broad discretion under both the Summerville Town Code and the law of South Carolina to approve or disapprove demolitions of existing structures and construction of new buildings. See, e.g., Town of Summerville Code of Ordinances §§ 32-175(f) & 32-176(h) (it is the duty of the BAR to determine the appropriateness of moving or demolishing any structure within the historic district upon consideration of historic, architectural and aesthetic features); Gurganious v. City of Beaufort BAR, 454 S.E.2d 912 (S.C. Ct. App. 1995).

A decision of a board of architectural review is to be given "great deference," such that it must remain "undisturbed if the propriety of that decision is even 'fairly debatable.'" Gurganious, 454 S.E.2d at 915 (quoting Knowles v. City of Aiken, 407 S.E.2d 639 (S.C. 1991) (other internal citations omitted)).

OPINION

As an initial matter, the Court finds the Board acted appropriately in signing the written BAR Order of August 3, 2015. The Appellants argue that the Court should not consider the written BAR Order prepared after the filing of the appeal and yet also contend the record contains inadequate findings for review. Appellants suggest the matter be remanded for the Board to prepare another order. The Court rejects this position. The statute governing BAR appeals allows the Court to remit the matter so an order with findings of facts and law can be prepared. S.C. Code Ann. § 6-29-930. However, the Court cannot find any reason why it should remand to the Board with directions to prepare an order with findings of fact and law when the Board has already done so. There is nothing in the statutes prohibiting the BAR from preparing an order after the notice of appeal is filed. The BAR Order has assisted this Court including presenting the issues and conclusions in a concise fashion. However, even without the BAR Order, the Court finds there is sufficient information and documentation in the record to affirm the decisions of the Board. Specifically, the records and materials presented to this Court, by way of the transcripts, minutes, and supporting materials, are entirely sufficient to support the Board's decisions. These records evidence the decisions of the BAR were appropriate and were supported by the evidence before it.

It is clear from the record that appropriate plans were submitted to the Board by the applicants and the Board, in turn, reviewed, considered and made appropriate requests for changes and revisions. In this regard, the record reveals the Board requested certain changes or improvements from the design team during initial public meetings, and those requested changes were in fact incorporated into the design plans at subsequent meetings. Fundamentally, the role of the BAR is to approve the aesthetics of a project and to consider its compatibility with surrounding areas. There are substantial facts in the record to support

that the BAR did perform that task, including its ultimate approval of the project by a 5-to-1 vote.

It is clear from the transcripts of the audio recordings that the BAR chairman's suggestion that speakers address the issues relevant to the aesthetics, design, architecture, height, mass, scale and harmony within the historical district of the Town was entirely appropriate given the scope of the BAR's duties. There is no indication that the Board unreasonably restricted public comment or participation. Indeed, members of the public were allowed by the Board to speak to matters outside the scope of the BAR's review despite the chairman's requests to keep the discussion to matters within the Board's purview.

The Court rejects Appellants' argument regarding alleged "secret meetings" of the BAR. There is no evidence in the record of secret meetings of a quorum of the Board. Furthermore, the Court is not permitted to receive evidence outside the record. Likewise, numerous other "grounds for appeal" raised by Appellants in their Petition would require reliance on additional evidence beyond the facts and arguments raised to the Board and thus cannot be a basis for reversing the decision of the Board. Many "grounds for appeal" raised by Appellants, such as issues related to the Town's request for proposal process or to the funding for the project, were matters beyond the purview of the Board and accordingly would have been inappropriate for the Board's or this Court's consideration.

Finally, Appellants' assertion that the BAR acted without rules of procedure is not supported by the record, nor is it a ground to reverse the decision of the BAR. To the contrary, the minutes of the meetings and the transcripts of audio recordings of the meetings show the basic rules of the proceeding were explained at the start of the meetings by the Board's chairman. Further, there is no evidence that Appellants suffered from a lack of procedure.

The Court finds that the Board acted within its broad discretion in approving demolition and/or salvaging of existing structures and in approving plans for construction of new structures. None of the grounds for appeal warrants this Court's reversal of the decisions of the Board. The Board had the authority to act as it did, and there is no basis to reverse the decisions of the Board.

IT IS, THEREFORE, ORDERED that Appellants' Petition is DENIED and the decisions of the Town of Summerville Board of Architectural Review are hereby AFFIRMED.



Edgar W. Dickson
First Judicial Circuit

Orangeburg, South Carolina

September 24, 2015