

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 GRAYS HILL BAPTIST CHURCH,)
)
 Plaintiff,)
)
 vs.)
)
 BEAUFORT COUNTY,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 2012-CP-07-1394

2016 FEB 29 10:01 AM
 JERRI L. ROSENBERG
 BEAUFORT COUNTY CLERK
 ORDER DENYING MOTION
 FOR RECONSIDERATION
 RECEIVED
 MAR 31 2016
 SC Court of Appeals

This matter comes before me pursuant to a Motion for Reconsideration filed by the Defendant Beaufort County, purportedly pursuant to Rules 52 and 59, SCRCP, requesting that I reconsider my Final Order of March 19, 2013. Shortly after the Defendant Beaufort County filed its Motion to Reconsider, the parties asked the Court to take the motion under advisement and to withhold a ruling, as the parties wished to continue negotiations in an effort to resolve this matter among themselves. The parties have now informed the Court that they have been unable to reach a settlement and Beaufort County's Motion for Reconsideration is now ripe for resolution.

After due consideration of the motion and arguments of counsel, I find and conclude that the motion should be denied.

In its motion, the Defendant Beaufort County enumerates six (6) alleged errors. Each of these alleged errors is set forth verbatim and discussed in turn herein below.

I.

The Circuit Court erred in making a determination that the property was grandfathered and thus did not have to apply for a new permit. This is a vested rights determination and is controlled by a separate statutory process. The Vested Rights Act is a set of statutory provisions under which a developer may seek to protect the right to

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undertake and complete the development of property. See S.C. Code Ann. §§ 6-29-1510 to 1560 (Supp. 2011). The Plaintiffs never asserted their rights under his process but rather availed themselves of the appeal of the denial of a new permit. The Court's finding that a new permit is not required is not appropriate in the context of this appeal.

Although this alleged specification of error is somewhat cryptic, the Defendant Beaufort County appears to be alleging that the Final Order somehow violates the Vested Rights Act, S.C. Code Ann. §§ 6-29-150, et seq. (2014).

Initially, I note that this is the first mention by the Defendant Beaufort County of the Vested Rights Act as it pertains to this case, and it seems untimely to be raising it for the first time after the case has been tried and a final order entered.

Even if the Vested Rights Act had been timely raised, however, it does not affect the decision in this case, for a couple of reasons.

First, the Vested Rights Act was passed by the General Assembly on July 22, 2004 and went into effect on July 5, 2005. This is well after the Defendant Beaufort County issued the Development Permit which is the subject of the Final Order to the Plaintiff Church on January 7, 1997. The Vested Rights Act does not purport to limit or revoke development permits which were already in effect. Indeed, the purpose of the Vested Rights Act is not to restrict or revoke development permits, but rather, the legislative findings underlying the Act expressly state that the Act's purpose is to protect, preserve and create vested rights in development permits. 2004 South Carolina Laws Act 287 (H.B. 3858), Legislative Findings, Section 1.

Second, the Vested Rights Act was enacted by the General Assembly in order to protect and preserve the development rights of landowners. The General Assembly recognized that it was desirable to establish vested rights in certain land developments in order to secure the

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reasonable expectations of landowners who make significant investments in sight evaluation, planning, and development. *Id.* The Vested Rights Act accomplishes this purpose in a fairly straight forward fashion. It guarantees that a development permit for a “site specific development plan,” which is the type of development at issue in this case (S.C. Code Ann. 6-29-1520(9) (2014)), must have an initial term of two (2) years, plus be guaranteed at least five (5) annual extensions. *Id.*, § 6-29-1530(A)(2). I emphasize the words “at least” in order to emphasize the fact that the Vested Rights Act is not intended to shorten the life of a development permit, but rather, is intended to guarantee at least a minimum life span to a development permit. In short, nothing in the Vested Rights Act prohibits or bars Beaufort County from honoring the development permit which it had already issued to the Plaintiff Church in this case. More to the point, the Vested Rights Act does not empower Beaufort County to rescind or revoke the development permit which it had already issued to the Plaintiff Church in this case.

Finally, this alleged specification of error overlooks the fact that the development permit issued by Beaufort County to the Plaintiff Church on January 7, 1997 expressly provides that it expires only if “substantial improvement” of the development has not occurred within two (2) years from the date of issuance. The evidence is uncontradicted that by December of 1997, well within this two (2) year time period, substantial improvement had occurred in that construction of all improvements shown on the development plat, except for the Fellowship Hall, had been completed. The Vested Rights Act does not “unvest” a right that had already vested at the time of the Act’s passage.

II.

The court erred in finding that the Boards’ determinations were arbitrary and capricious and not supported by the evidence in the Record. The Boards’ respective

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determinations on both the Variance and on the Development Permit issue were supported by evidence in the record and the Circuit Court has erred in replacing its judgment for that of the Planning Commission and the Zoning Board of Appeals. The Court has further erred in applying law relative to the Ordinance allowing for expansion to a nonconforming place of worship as well as in applying the law relative to the issuance of a variance by the ZBOA.

This alleged specification of error is very broad and general. The Defendant Beaufort County does not identify what "law" was allegedly erroneously applied, nor what "determinations" were allegedly disregarded.

The Defendant Beaufort County correctly notes that it would be error for the Circuit Court to replace its judgment for that of the Planning Commission and the Zoning Board of Appeals. The Final Order expressly recognizes that the Circuit Court cannot reverse the decisions of these County Boards unless the Boards' findings of fact have no evidentiary support or the Boards committed an error of law. See Final Order of Judgment, pg. 5, citing *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (Ct.App.1994). See also Final Order of Judgment, pg. 19, Conclusion of Law number 2. Rather than re-recite every Finding of Fact and Conclusion of Law set forth in the Final Order of Judgment, reference is simply craved to the Findings of Fact and Conclusions of Law which are set forth in detail in the Final Order of Judgment.

III.

The Court erred in failing to note the intervention of the United States of America in this action.

On May 20, 2011 the United States of America filed a Motion to Intervene in Cases

2008-CP-07-1114 and 2010-CP-07-4844 and, with the consent of the parties, this motion was granted on June 30, 2011. The fact that the United States of America is an intervenor in this case, however, does not affect the merits of the case, nor does it alter any of the substantive findings or conclusions set forth in the Final Order of Judgment.

IV.

The Court erred as a matter of law in finding Development Permit No. 3057 applied to any new construction designated as Phase II of the original Development Plan.

This issue was discussed at length in the Final Order of Judgment. As Beaufort County correctly notes the Development Permit (Exhibit B to the Final Order of Judgment) permits development of the Church's property as shown on the original Development Plat (Exhibit A to the Final Order of Judgment). Contrary to what Beaufort County now asserts, this original Development Plat is not broken down into phases. The word "phase" much less the phrase "Phase II" appears nowhere on the Development Plat. The Development Plat is one, unified, project. The building which is the subject of this controversy, which the parties now refer to as the Fellowship Hall, is plainly and clearly shown on the original Development Plat, labeled "Proposed Sanctuary." Contrary to what this alleged specification of error states, there is no "new construction" in the sense that the Church is seeking to build anything that is not already plainly and clearly shown on the original Development Plan.

V.

The Court erred in its application of the Ordinance in that it is clear that the intent of the Ordinance was to allow up to a 15% increase to the building as opposed to a 15% increase of the disturbed area. Under the Plaintiff's definition the addition of a 10,000 square foot building on "disturbed area" would not technically increase any percentage of

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the “disturbed area.”

This alleged specification of error is discussed at length in the Final Order of Judgment. See Findings of Fact 17, 18, 19, 20, 31(b). In sum, when the Church’s application for a new Development Permit was heard by the County’s Development Review Team (DRT) on March 7, 2007, the County’s Ordinance allowed nonconforming places of assembly and worship to be expanded by up to 15% of the “disturbed area,” provided the expansion did not increase the occupant load of the building. Since the disturbed area of the Church’s development is 184,785 square feet, and the proposed Fellowship Hall is 10,000 square feet, the proposed expansion is only 5.45% of the disturbed area, well below the 15% threshold. The DRT, however, denied the application, ignoring the language of the existing Ordinance and instead relying upon the language of a proposed amendment to the Ordinance which was being considered at that time by Beaufort County Council. This proposed amendment changed the wording of the Ordinance from 5% of the “disturbed area” to 15% of the “existing floor area,” provided that the expansion does not increase the occupant load of the building. This proposed amendment was not enacted until the following year, on February 25, 2008. Clearly, the DRT erred in applying the language of a proposed amendment to the Ordinance, instead of applying the actual Ordinance which was in effect at the time of the application and hearing. I reject the argument that the Defendant Beaufort County now makes, that this change in wording was simply a clarification of the intent of the original Ordinance. Changing the criteria from all of the “disturbed area,” which would include for example a parking lot, to only “existing floor area,” is not simply a clarification of intent but a significant change in substance of the Ordinance.

Additionally, the foregoing decision by the DRT was a preliminary decision. When the DRT made its final decision, on October 10, 2007, it apparently recognized the fact that the

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Fellowship Hall would occupy substantially less than the 15% of the disturbed area, as the only reason relied upon by the DRT in disapproving the project was its conclusion that allowing the new building "could substantially increase the occupant load of the site." See Final Order of Judgment Exhibit K.

VI.

The Court erred in failing to find that the addition of 10,000 square feet of building to the property would not increase available occupant load of the building on the site given the testimony in the record.

This issue was discussed at length in the Final Order of Judgment in Findings of Fact 21, 28, 31(g), and 31(h), and reference is craved to these portions of the Final Order of Judgment. The evidence establishes that the Church and the Fellowship Hall would not be occupied at the same time.

CONCLUSION

For the reasons set forth herein the Defendant Beaufort County's Motion for Reconsideration shall be and is hereby denied.

AND IT IS SO ORDERED.



Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

Beaufort, South Carolina

Date: 2/29/16

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